JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

JUDICIAL DEPARTMENT

Writ Petition No. 2629 of 2022

Mst. Kalsoom Munawar

VERSUS

Federation of Pakistan through Secretary, Establihsment Division, etc.

PETITIONER BY:	Mr. Javaid Iqbal Banday, Advocate
RESPONDENT BY:	Mr. Fahad Khan Tareen, A,ssistant Attorney General Mr. Abid Jameel, Cheif Welfare Officer, Staff Welfare Orgination, islamabad.
DATE OF HEARING:	14.09.2026

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AYYAZ SHAUKAT, J:- By means of this petition, the petitioner impugns the recovery of Rs.735,603/- from her salary at source on account of the outstanding dues of the Hostel for Working Women, G-7/1, Islamabad. The recovery is being effected at the rate of Rs.12,262/- per month with effect from 01.06.2022. She seeks a declaration that the Staff Welfare Organization's (Hostel Accommodation) Rules, 2012, notified vide S.R.O. 42(KE)/2013 (the **"Rules of 2012"**), are ultra vires, being repugnant to the Fundamental Rules and the Supplementary Rules, and a direction that the respondents be restrained from claiming hostel charges beyond the house rent admissible to her pay scale. She also prays for the withdrawal of the recovery, and a direction that the hostel premises be utilised for the welfare of Government servants and not be let out to private persons.

2. Learned counsel for the petitioner submitted that the petitioner was appointed as Lecturer (BPS-17) in Physics through the Federal Public Service Commission and joined the Islamabad Model College for Girls, F-

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7/4, Islamabad, on 14.11.2007. She was subsequently promoted as Assistant Professor (BPS-18) on 31.05.2018 and was granted the time-scale BPS-19 with effect from 05.03.2020.

3. It was submitted that the petitioner hails from District Bagh, Azad Jammu and Kashmir, and is unmarried. She, therefore, applied for accommodation in the Hostel for Working Women, Islamabad, which is run under the Establishment Division and supervised by the Staff Welfare Organization (the **"SWO"**). The hostel was then governed by the Staff Welfare Organization's Accommodation Allocation Rules for Hostel for Federal Government Female Employees, Rawalpindi or Islamabad, 2007 (the **"Rules of 2007")**, published in the Gazette on 24.01.2008. Those rules were later superseded by S.R.O. 42(KE)/2013, published in the Gazette on 24.06.2013.

4. Learned counsel submitted that the petitioner was first accommodated in a store room and was later allotted Room No.34 in the hostel at G-7/1. Gas charges were introduced, and a charge of Rs.6,000/- per month was levied for an air conditioner, although an electricity meter stood installed outside every room. He submitted that another lady was lodged with the petitioner in spite of her single occupancy. He contended that a bachelor officer in BPS-17 draws a monthly house rent of Rs.4,432/- only, whereas the aggregate of rent and utilities under the revised rules came to about Rs.7,500/- per month.

5. It was further submitted that the petitioner regularly paid her rent, and that all her dues were cleared on 14.01.2019, when an amount of Rs.22,740/- was received from her against a receipt issued by the Welfare Officer. Notwithstanding this, an eviction notice was issued and a sum of Rs.694,303/- was demanded, which was subsequently enhanced to

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Rs.735,603/-. The petitioner approached the Wafaqi Mohtasib, who recommended that the dues be recalculated. Learned counsel contended that the respondents never recalculated the dues. Instead, the Accountant General commenced the deduction of Rs.12,262/- per month from her salary with effect from 01.06.2022, as reflected in the change alert dated 07.06.2022.

6. Learned counsel next submitted that under the Audit Instructions below Fundamental Rule 45, and under Fundamental Rule 45-A, rent cannot exceed ten per cent of the pay of the officer, and that all amenities are included in the standard rent so that utilities cannot be charged separately. He contended that the receipt of 14.01.2019 operates to conclude the matter; that the impugned decision was taken without affording the petitioner an opportunity of hearing, in violation of the principle of audi alteram partem; that Fundamental Rule 45 read with Supplementary Rules 311 to 316, and Supplementary Rules 318 and 326, were not followed; and that the petitioner has been discriminated against. He placed on record a calculation according to which the outstanding amount, if rent is taken at ten per cent of the basic pay, comes to Rs.347,979/- as against Rs.694,303/- originally demanded.

7. Respondents No.1 and 4 filed their report and para-wise comments. Learned Assistant Attoreny General controverted the submissions of the petitioner and relied on that report. The substance of the report is that the petitioner executed an agreement dated 12.02.2008 containing fifteen terms and conditions, including payment of the prescribed rent and utility charges; and that the rules of 1989 were superseded by the Rules of 2007 and then by the Rules of 2012, which were circulated among the allottees. It is stated that the petitioner neither vacated the premises nor paid the dues, which accumulated to Rs.735,603/-.

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8. On these facts it was contended that the petition is not maintainable. The petitioner is said to have suppressed the proceedings before the Wafaqi Mohtasib and the President, which have attained finality. The second of the preliminary objections invokes Section 18 of the Federal Ombudsmen Institutional Reforms Act, 2013 (reproduced in paragraph 23 below), on the footing that a matter decided by an Ombudsman cannot be agitated before this Court. It was also contended that the petition raises factual controversies and is barred by the doctrines of res judicata and laches, and reliance was placed on ***Suleman Shah v. Judge Family Court / Additional District and Sessions Judge, Muzaffarabad*** **(2022 CLC 1454)**. On merits, it was contended that hostel dues are not computed with reference to salary or house rent; that utility charges are payable separately under the rules; that the petitioner resisted sharing her room and was rightly charged at the single occupancy rate; and that the hostel is a welfare facility, far cheaper than private accommodation, which she chose of her own accord. Dismissal of the petition with costs was prayed for.

9. I have heard learned counsel for the petitioner as well as learned counsel Assistant Attorney General, and have carefully perused the record, the report submitted by the respondents and the applicable law.

10. The dispute in this petition is, in the end, about money. It is, however, presented in the form of three distinct challenges. The first is to the vires of the rules under which the hostel dues were computed. The second is to the liability which has been computed under those rules. The third is to the manner in which that liability is being recovered. Before any of these can be examined, it must be noticed that the very liability now questioned has already been examined, at the petitioner's own instance, by the Wafaqi Mohtasib and by the President.

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11. The record begins with the petitioner's own application dated 15.12.2007 for allotment of accommodation in the Hostel for Working Women, Islamabad. It contains the following undertaking duly signed by her:

> *"I undertake to abide by all the Rules & Regulations governing the allotment of the Hostel in force and amended from time to time."*

Her Principal recommended the request and certified that, in case of her default in payment of hostel charges, the same would be recovered through her salary and remitted to the administration of the hostel.

12. By office order dated 11.02.2008, the SWO allotted her accommodation in Store No.II of the hostel at G-7/1 for a period of three months "on usual charges fixed from time to time". She then executed an agreement with the SWO, by which she declared that she had read and understood the rules notified vide S.R.O. No.912(I)/89, and agreed to abide by them "and subsequent amendments made in these rules from time to time". The following two clauses of that agreement are material:

> *"It is agreed upon by the Resident that the outstanding dues can be recovered by the Management from her pay through her employer or Accountant General, Pakistan Revenues or from the office dealing with such disbursement.*
>
> *Allotment of accommodation shall be two in one room basis. However, in case Management authorizes the allotment of any room on single seat basis, the resident shall pay rent and Gas/A.C Charges at double rates."*

13. The petitioner remained in the hostel from February, 2008 until 14.01.2019. The latter date is stated by her, in her own representation to the Secretary, Establishment Division, to be the date on which she vacated the room. She thus occupied, for nearly eleven years, accommodation which

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had been allotted to her for three months. It is not the petitioner's case that the period was ever extended by any order of the competent authority.

14. During that period three sets of rules remained in force in succession. The first were the rules for allotment of accommodation in the Hostel for Working Women, Islamabad, notified by S.R.O. 912(I)/89 and published in the Gazette on 09.09.1989. They were superseded by the Rules of 2007, which were made "in exercise of the powers conferred by Fundamental Rule 45 of the Fundamental and Supplementary Rules". Under rule 5(2) of the Rules of 2007 each room was to be shared by two employees, and single occupancy for officers in BPS-17 and above was left to the discretion of the Director General. Rule 6 fixed the rent for BPS-17 to 19 at Rs.60/- per day per room on double occupancy basis. A separate daily charge was levied for electrical appliances, and dues not cleared were to be adjusted from the salary of the allottee through the Accountant General.

15. The Rules of 2012 were notified by S.R.O. 42(KE)/2013 dated 16.05.2013 and published in the Gazette of Pakistan, Extraordinary, on 24.06.2013. The preamble recites that they were made "in exercise of the powers conferred by Fundamental Rules 45 and 45 A". Rule 15 repealed the Rules of 2007. The provisions material to the present controversy are as follows. Rule 2 defines "allotment" as an allotment of hostel bed-rooms on a temporary basis for a fixed period, "hostel" as a hostel run by the Organization to provide temporary residence to Federal Government female employees, and "charges" to include rent, guest charges, utility bills and any other charges levied by the Organization.

16. Rules 3, 5, 6 and 8 provide:

> *"3. Eligibility.- (1) All female Federal Government Employees posted at Islamabad or Rawalpindi who are neither in possession of any Government accommodation nor owning any house in Islamabad or*

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Rawalpindi, shall be entitled for allotment of accommodation in the hostel for a period not exceeding six months with no extension, subject to availability of accommodation and on payment of rent and charges as prescribed in these rules. ...

5. Use of accommodations.- ... (2) Each room in the hostel shall be shared by maximum of two allottees however, in cases of allottees in BS-18 and above the authority may allow accommodation on single occupancy basis. ...

6. Rent charges.- Rent for shared accommodation shall be charged at the following rates namely:-

(b) BS-17-19 and equivalent: Rs.150/- per day per allottee;

Provided that in case of single occupancy rent shall be charged at the rate of double of the said prevailing rent; ...

8. Clearance of dues.- (1) The rent and charges specified in rules 6, 10 and 11 shall be paid in advance by the allottees regularly on or before the tenth day of each month.

(2) All dues including losses and damages shall be cleared within a week, failing which the adjustment will be made against the security or from the salary of the allottee at source through the department which disburses salary to her and the allotment shall stand automatically cancelled and the defaulter shall not be eligible for the allotment in future."

17. Rules 9 and 10 then provide for a charge for electrical appliances at fifty rupees per day per room, for gas charges per day per allottee at seasonal rates, and for a charge of six thousand rupees per month per air conditioner during the summer months, where an allottee chooses to install one.

18. Three features of these rules merit notice at the outset. The first is that the hostel is, by definition, a temporary residence, and eligibility is confined to six months with no extension. The second is that the charge is a daily charge per allottee for a bed-room, and not the rent of a residence

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allotted to an officer. The third is that the Rules of 2007, the Rules of 2012 and the agreement executed by the petitioner each provide for the recovery of unpaid dues from salary at source.

19. Against this background the demand was raised. Eviction notice No.SWF-3(102)/2018/834, issued in July, 2018, recorded the petitioner as a wilful defaulter, stated that her allotment stood automatically cancelled under rule 8(2), and demanded Rs.694,303/-. The notice set out the computation. Single occupancy rent was charged at Rs.120/- per day against Rs.60/- paid for the period from September, 2011 to 15.05.2013; at Rs.300/- per day against Rs.60/- paid from 16.05.2013 to December, 2017; and at Rs.300/- per day, nothing having been paid, from January to July, 2018. Electrical appliance charges, gas charges, guest charges and late charges were added thereto. The demand was later brought up to the date of vacation of the room and stood at Rs.735,603/-.

18. The petitioner lodged Complaint No.WMS-HQR/0008933/18 before the Wafaqi Mohtasib, registered on 29.10.2018, alleging discrimination in the charging of hostel dues. Her grievance was that she was being charged under the Rules of 2012 whereas, according to her, other allottees were paying under the earlier rules. The complaint was rejected by findings dated 31.12.2018. Her review petition was heard on 06.03.2019, when both parties attended, and was rejected by revised findings dated 08.03.2019. The Mohtasib held that maladministration on the part of the SWO was evident, in that it did not timely deduct the room rent from the occupants, due to which the outstanding dues swelled; that the room rent was still less than the complainant's house rent allowance; that the Agency was justified in recovering the entire outstanding dues on account of room rent and electricity charges for the actual number of days the room was under her

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possession; and that the Agency was recommended to recalculate and recover the actual amount payable on that basis.

19. The petitioner then made a representation to the President. She was heard in person on 11.06.2019. By decision No.96/WM/2019 dated 18.07.2019, the representation was disposed of with the finding that the petitioner had been charged for her stay in accordance with the rules then in force, had failed to identify any departure from the statutory provisions and had merely questioned the propriety of the revised rates of room rent and utilities. The Mohtasib's revised decision was accordingly found to be well reasoned and within the bounds of law. The representative of the Agency was, however, advised to recalculate the dues after affording the petitioner an adequate opportunity of hearing.

20. What followed is also a matter of record. Recovery notices were issued between January, 2019 and April, 2020. The Departmental Accounts Committee, chaired by the Secretary, Establishment Division, had already directed recovery at source on 27.12.2018. In October, 2021 the petitioner addressed the Secretary, Establishment Division, with a prayer for the waiver of the outstanding dues of Rs.735,603/-. In that letter she stated that she was unable to pay the dues, that she had paid rent in accordance with the Rules of 2007 at Rs.60/- per day from February, 2008 until January, 2019, and she asked that the amount be waived on humanitarian grounds. The request was declined. On 04.01.2022 the Federal Directorate of Education asked the Accountant General to recover the amount in sixty instalments. A detailed statement was then prepared covering sixty-one periods from 11.02.2008 to 14.01.2019. It shows Rs.875,966/- as due, Rs.140,363/- as paid, and Rs.735,603/- as outstanding, and bears an endorsement of receipt signed by the petitioner on 02.03.2022, the calculation having been redone in her presence at a reconciliation meeting.

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The deduction began on 01.06.2022 and is to run until 30.06.2027. The present petition was filed in July, 2022.

21. The respondents have placed considerable emphasis on the alleged suppression of the proceedings before the Wafaqi Mohtasib and the President. It must be said, in fairness to the petitioner, that paragraph 5 of the petition does refer to the complaint, to the recommendation for recalculation and to the President's decision of 18.07.2019. To that extent the objection is overstated. What the petition does not do is to place either decision on record, or disclose the prayer for waiver, the letter of 04.01.2022 or the statement of 02.03.2022. Nor does it pray that either decision be set aside. That omission is of more than procedural significance, for reasons which follow.

22. An objection of this nature must be determined as a threshold matter, before the merits of the petition are examined. If the Court may not entertain the grievance, no purpose is served by examining it, and the duty to decide the point does not wait upon an invitation from either side. The august Supreme Court stated the position in ***Town Committee, Gakhar Mandi v. Authority under the Payment of Wages Act, Gujranwala*** **(PLD 2002 SC 452)**:

> *"Jurisdiction of any forum, Court or Tribunal holding any proceedings is always the core question. It is therefore obligatory for officers presiding over such fora to determine the question of their jurisdiction whenever some doubt exists or is expressed about it, irrespective of the stage of the proceedings at which such an objection is raised."*

The reason for the rule appears from ***S.M. Waseem Ashraf v. Federation of Pakistan*** **(2013 SCMR 338)**. Read with Article 175(2) of the Constitution, jurisdiction is what the Constitution or a law gives, and what is done without it is void. Parties can neither confer it upon a court by

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consent nor take it away by acquiescence. To this must be added the qualification written into Article 199(1) itself, that the High Court may act only where it is satisfied that no other adequate remedy is provided by law.

23. The effect of those proceedings may now be examined. The complaint was made under the Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983 (P.O. No.1 of 1983). Article 32 of that Order provides:

> *"32. Representation to President.- Any person aggrieved by a decision or order of the Mohtasib may, within thirty days of the decision or order, make a representation to the President, who may pass such order thereon, as he may deem fit."*

24. Section 18 of the Federal Ombudsmen Institutional Reforms Act, 2013, upon which the respondents rely, reads:

> *"18. Bar of jurisdiction.- No court or authority shall have jurisdiction to entertain a matter which falls within the jurisdiction of an Ombudsman nor any court or authority shall assume jurisdiction in respect of any matter pending with or decided by an Ombudsman."*

25. A provision of this kind does not, by itself, oust the constitutional jurisdiction of this Court. The position was recently restated by the Federal Constitutional Court in ***Ghulam Abbas v. Telephone Industries of Pakistan (Pvt.) Ltd. and others*** **(F.C.P.L.A. No.464 of 2025**, judgment dated 06.02.2026), where, dealing with Article 29 of P.O. No.1 of 1983, their lordships observed:

> *"It is by now well established that a constitutional court may interfere under Article 199 of the Constitution where an order of the Wafaqi Mohtasib suffers from want or excess of jurisdiction, is coram non judice, or has been passed in violation of the law. In this regard, reference may aptly be made to the judgment of the Supreme Court of Pakistan in the case of Pakistan International*

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Airlines Corporation Karachi v. Wafaqi Mohtasib and others (1998 SCMR 841)."

Their lordships further held that a representation to the President under Article 32, though a statutory recourse, does not operate as an absolute bar to the jurisdiction under Article 199, particularly where the impugned order is ex facie contrary to Article 9 of the Order of 1983 or has been passed without jurisdiction. Their lordships noted that similar observations had been made by the august Supreme Court in ***Peshawar Electric Supply Company Ltd. v. Wafaqi Mohtasib (Ombudsman) Islamabad and others*** **(PLD 2016 SC 940)**.

25. The principle so stated operates in both directions. The constitutional jurisdiction remains available to correct a want of jurisdiction, an order that is coram non judice, or an order made in violation of law. It does not, however, constitute a further appeal from a decision of the Mohtasib or of the President reached within jurisdiction and on the merits. In **Ghulam Abbas** the complaint was a personal service grievance of an employee against his own employer, which Article 9(2) of P.O. No.1 of 1983 expressly excludes from the Mohtasib's jurisdiction. The present case is of an altogether different kind. The petitioner serves under the Federal Directorate of Education. Her complaint was against the Establishment Division and the SWO about the charges of a welfare hostel. It concerned neither her service nor the agency in which she works. No one questioned the jurisdiction of the Mohtasib at the time, and no one questions it now.

26. No illegality has been pointed out in the decision of the President. The august Supreme Court held in ***Federation of Pakistan v. Muhammad Tariq Peerzada*** **(1999 SCMR 2744)** that "the recording of valid reasons while setting aside the recommendations of the Mohtasib, would be the minimum requirement of law". Here the President did not set the

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recommendations aside. He affirmed them, after hearing the petitioner in person, and he recorded his reasons: the petitioner had been charged under the rules in force from time to time, and she had pointed out no statutory departure. That reasoning is neither perverse nor without foundation in the record.

27. It follows that the petitioner elected her forum. She invoked the remedy provided by P.O. No.1 of 1983, pursued it through review and representation, and received a decision on the merits. The doctrine of election of remedies, as explained by the august Supreme Court in ***Trading Corporation of Pakistan v. Devan Sugar Mills Limited and others*** **(PLD 2018 SC 828)**, holds a litigant who has chosen one of several available remedies, and pursued it to its conclusion, to the consequences of that choice. The present petition seeks, in substance, what the Mohtasib and the President declined: that she be charged not under the Rules of 2012 but at a rate which she considers fair. It is the same grievance, now dressed in the garb of a challenge to vires.

28. If the petitioner's true complaint is that the recalculation recommended by the Mohtasib was never carried out, that complaint also lies elsewhere. The Order of 1983 provides its own machinery for the implementation of the findings of the Mohtasib. Article 11(2) of the Order requires the Agency to inform him of the action taken upon his recommendations, or of the reasons for not complying with them. A grievance that a recommendation has not been implemented is to be agitated before the forum which made it, and Article 199(1) of the Constitution permits this Court to act only where no other adequate remedy is provided by law. The record in any case shows that the recalculation was undertaken, and that the statement of 02.03.2022 is its product. To the extent, therefore, that the petition seeks to reopen the liability so

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determined, it cannot be entertained. That would be sufficient to dispose of this petition. Since, however, the challenge to the vires of the Rules of 2012 is formally distinct, and questions of law have been argued at length, I proceed to examine them.

29. The starting point is the source of the rule-making power. The Rules of 2012 recite that they are made under Fundamental Rules 45 and 45-A. Fundamental Rule 45, as placed on record by the petitioner herself, reads:

> *"F.R. 45. A local Government may make rules or issue orders laying down the principles governing the allotment to officers serving under its administrative control, for use by them as residences, of such buildings owned or leased by it, or such portions thereof, as the local Government may make available for the purpose. Such rules or orders may lay down different principles for observance in different localities or in respect of different classes of residences, and may prescribe the circumstances in which such an officer shall be considered to be in occupation of a residence."*

30. Two features of Fundamental Rule 45 are significant. The first is that it confers a power to make rules governing allotment of buildings as residences. The second is that it expressly contemplates different principles for different classes of residences. A temporary hostel for working women, where a bed-room is allotted for a fixed period on a daily charge, is plainly a class of its own.

31. Fundamental Rule 45-A governs the rent payable where Government supplies a residence to an officer. Clause III provides for calculating the "standard rent" of a residence, on the basis of the lease rent in the case of a leased building and on the basis of capital cost in the case of a building

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owned by Government. Clause IV, in the extract placed on record by the petitioner, provides as follows:

> *"IV. When Government supplies an officer with a residence leased or owned by Government, the following conditions shall be observed:-*
>
> *(b) Unless in any case it be otherwise expressly provided in these rules, he shall pay:- (i) rent for the residence such rent being the standard rent as defined in clause III above or 5 per cent of his monthly emoluments, whichever is the less; and (ii) municipal and other taxes payable by Government in respect of the residence not being in the nature of house or property tax.*
>
> *(c) Nothing contained in clause (b) above shall operate to prevent a local Government from:- ... (ii) taking a rent in excess of that prescribed in sub-clause (b) above from an officer:- (2) who, at his own request, is supplied with accommodation which exceeds that which is appropriate to the status of the post held by him, ..."*
>
> *The extract placed on record by the petitioner thus fixes the ceiling at 5 per cent of monthly emoluments. The figure of ten per cent on which learned counsel proceeded is drawn from the Audit Instruction below Fundamental Rule 45, not from clause IV(b) itself; nothing turns on the difference, as the petitioner fails on either figure for the reasons that follow.*

32. The first ground of the petition rests on an Audit Instruction below Fundamental Rule 45. That instruction, as quoted in the petition itself, deals with the recovery of rent from Government servants paid from Defence Services Estimates when they occupy buildings which are the property of the Federal (Civil) Government. It has no nexus with the petitioner, who is a civil servant paid from civil estimates occupying a welfare hostel. The

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ceiling of ten per cent, on which the petitioner's entire calculation proceeds, is imported from that instruction. It has no application here.

33. The second ground rests on Fundamental Rule 45-A. That rule, however, presupposes an officer to whom Government has supplied a residence. The salary slip which the petitioner has herself annexed shows that she was drawing house rent allowance. She was not an officer supplied a residence in lieu of her house rent allowance. She was an allottee of a bed-room in a temporary hostel, paying a daily charge for a service. The Mohtasib found, as a fact, that the room rent was still less than her house rent allowance. That finding has not been displaced.

34. Even if Fundamental Rule 45-A were engaged, the petitioner's case would fail on its own terms. Clause IV(b) itself yields to any express provision to the contrary. Clause IV(c)(ii) permits a rent in excess of the capped rent from an officer who, at her own request, is supplied accommodation exceeding that which is appropriate to the status of her post. Under rule 5(2) of the Rules of 2012 single occupancy may be allowed only to allottees in BS-18 and above. The petitioner was in BPS-17 until 31.05.2018. The doubled rent of which she complains is precisely the charge for single occupancy of a room meant for two. Moreover, the cap in clause IV(b) operates against a standard rent calculated under clause III. No material regarding the capital cost or standard rent of the hostel has been placed on record. The petitioner's calculation simply substitutes ten per cent of her basic pay for the prescribed tariff. That is not a demonstration of illegality.

35. The contention that utilities are included in the rent is equally untenable. Clause IV(b)(ii) of Fundamental Rule 45-A itself contemplates payments in addition to rent. Rule 2(i) of the Rules of 2012 defines

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"charges" to include rent, utility bills and other charges, and rules 9 and 10 prescribe the utility charges separately. The Rules of 2007 too levied a separate charge for electrical appliances. The petitioner was charged under that head for the period from 2010 to 2013, and she did not object to it under the regime she now seeks to have applied to her. As for Supplementary Rules 311 to 316, 318 and 326, their text has not been placed on record, and learned counsel was unable to show how any of them is infringed. A ground so framed amounts to no more than a bald assertion.

36. It is here that the principles governing a challenge to the validity of a law become relevant. Those principles were summarised by the august Supreme Court in ***Lahore Development Authority v. Ms. Imrana Tiwana*** **(2015 SCMR 1739)**, and are consistent with the earlier exposition in ***Messrs Elahi Cotton Mills Ltd. and others v. Federation of Pakistan*** **(PLD 1997 SC 582)**, and were recently reproduced and applied by themHon'ble Federal Constitutional Court in ***Nauman Ahmad and others v. Government of Khyber Pakhtunkhwa and others*** **(C.P.L.A. No.3992 of 2025 etc., order dated 14.05.2026)**. Among them are the following:

> *"(i) There is a presumption in favour of constitutionality, and a law must not be declared unconstitutional unless the statute is placed next to the Constitution and no way can be found in reconciling the two; ...*
>
> *(iii) A statute must never be declared unconstitutional unless its invalidity is beyond reasonable doubt. A reasonable doubt must be resolved in favour of the statute being valid; ...*
>
> *(vii) The Court is not concerned with the wisdom or prudence of the legislation but only with its constitutionality;"*

In the same order, the Hon'ble Federal Constitutional Court relied on ***Shahtaj Sugar Mills Ltd. and others v. Government of Pakistan***

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(2024 SCMR 1656) for the proposition that the burden lies upon the person challenging the vires of a law to demonstrate its invalidity. If that is the standard for primary legislation, a challenge to subordinate rules on the ground of repugnancy to the parent rule must at least identify the provision infringed and show the repugnancy. Subordinate legislation is valid so long as it remains within the four corners of the power under which it is framed, and is liable to be struck down only upon a demonstrated excess of that power *(Messrs Mustafa Impex, Karachi v. Government of Pakistan (PLD 2016 SC 808)).* The petitioner has done neither. The level of a daily charge for a welfare hostel is a matter of policy. It is not for this Court to substitute its own view of what would be fair.

37. There is a further difficulty in the petitioner's way. Her grievance before the Mohtasib was that she should be charged under the Rules of 2007. Those rules were made by the same Division, under the same Fundamental Rule 45. She cannot accept the one set of rules as valid and binding upon her and reject its successor, made under the same power, as void. When she applied for the accommodation she undertook to abide by the rules "in force and amended from time to time". A litigant cannot be permitted to approbate and reprobate in this manner.

38. The challenge is also belated. The Rules of 2012 were published in June, 2013. The petitioner lived under them for more than five years, contested the charges under them before the Mohtasib and the President, and vacated the room in January, 2019. She challenged the rules in July, 2022, more than nine years after their publication. No explanation is offered for the delay. In ***Ardeshir Cowasjee and others v. Karachi Building Control Authority (KMC), Karachi and others*** **(1999 SCMR 2883)** the august Supreme Court explained the nature of the objection in these words:

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> *"In our view, laches per se is not a bar to a Constitutional Petition. ... the delay or the question of laches is to be examined on equitable principles for the reason that grant of Constitutional relief is discretionary relief and the Court may decline to process into service its Constitutional jurisdiction if it would be inequitable in keeping in view the conduct of a petition."*

To the same effect is ***State Bank of Pakistan v. Imtiaz Ali Khan and others*** **(2012 SCMR 280)**. The deduction was challenged promptly after it began. However, the deduction is only the mode of recovery of a liability that had been determined years earlier. On the facts of this case, the conduct of the petitioner does not warrant the exercise of discretion in her favour on the question of vires.

39. That brings me to the liability itself. The petitioner relies on the receipt of 14.01.2019. That document records a payment of Rs.22,740/- on account of the rent of the room. The mere receipt of a payment does not operate as a release or discharge of an antecedent liability arising under the rules. The demand had been raised in July, 2018, and the Departmental Accounts Committee had directed recovery at source on 27.12.2018, both before that payment. The petitioner's own conduct is inconsistent with the plea. In October, 2021 she did not claim that nothing was due. She asked that the outstanding Rs.735,603/- be waived on humanitarian grounds. And her own calculation filed in this Court concedes that, even on her theory, Rs.347,979/- remains payable.

40. The complaint of denial of hearing is equally unfounded. The petitioner was heard by the Mohtasib on review, and was heard in person by the President. The recalculation directed by the Mohtasib was undertaken, and the statement of 02.03.2022 was delivered to her. I do not treat her endorsement of receipt on that statement as an admission of its

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correctness. But she has not pointed to any specific entry among its sixty-one periods as wrong.

41. Another difficulty would have met the petitioner even if the way had been clear. Much of what she asks this Court to decide is not a question of law. Did the room remain under single occupancy throughout, or was it shared for a part of the time, as she asserts? Is the sum of Rs.71,175/- raised for the period from 11.02.2008 to 15.05.2013, which the statement attributes to an audit observation, correctly charged? What, if anything, fell due between August, 2018 and the vacation of the room in January, 2019? Every one of these is asserted on one affidavit and denied on another. An account of this description is settled upon evidence, led and tested in the ordinary way. In ***Fida Hussain v. Mst. Saiqa*** **(2011 SCMR 1990)** the august Supreme Court held:

> *"It is well settled by way of plethora of case-law laid down by Superior courts that the High Court is not to resolve the disputed questions of facts in exercise of constitutional jurisdiction under Article 199 of the Constitution."*

In ***Secretary to Government of the Punjab v. Ghulam Nabi*** **(PLD 2001 SC 415)** the august Supreme Court further declined interference with questions of fact which had been determined by the fora provided in the hierarchy under the relevant law. The same limitation on the summary jurisdiction under Article 199 was recognised in ***Muhammad Hussain Munir v. Sikandar*** **(PLD 1974 SC 139)**. The Mohtasib and the President are such fora in the present case.

42. As to the mode of recovery, rule 8(2) of the Rules of 2012 expressly authorises adjustment of unpaid dues from the salary of the allottee at source through the department which disburses her salary. The Rules of 2007 contained a similar provision. The petitioner agreed in writing that her

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dues could be recovered from her pay through her employer or the Accountant General, and her Principal certified the same when forwarding her application. The recovery has been spread over sixty one months. It is neither without lawful authority nor oppressive.

43. It would be idle to suggest that this recovery sits lightly upon the petitioner. A deduction of Rs.12,262/- every month for five years is a heavy charge upon the salary of a college teacher. The hostel was set up as a welfare measure, and what is now being taken from her is the product of an allotment of three months which ran for eleven years, and of charges which went unpaid as they accrued. Sympathy, however, is not jurisdiction. Whether dues owed to the public exchequer should be remitted, in whole or in part, is for the executive authority competent to remit them. The petitioner asked that authority and was refused. If she wants the pace or the mode of recovery eased, the request belongs where such relief can lawfully be given, and not here.

44. It remains to deal with the plea of discrimination. The petitioner's case before the Mohtasib was that other allottees were being charged at the old rates. No material identifying any such allottee has been placed before this Court. In the case of ***Muhammad Yasin v. D.G. Pakistan Post Office*** **(2023 SCMR 394)** the august Supreme Court explained that Article 25 of the Constitution comes into operation where a benefit is granted to some persons in accordance with law and denied to others similarly placed. It has no application to a claim founded upon an unlawful act done in favour of others, for Article 25 guarantees the equal protection of law and not the equal protection of lawlessness. The plea of discrimination therefore fails. Similarly, the prayer that the hostel be kept for Government servants and not let out to private persons, is unsupported by any material. The

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petitioner, having vacated the hostel in January, 2019, asserts no right in it today and no relief to that effect can therefore be granted.

45. Finally, the manner in which these dues were allowed to accumulate calls for the attention of this Court. I offer it as a comment and attach no direction to it. The Mohtasib found maladministration on the part of the SWO, in that it did not deduct the room rent in time, with the result that the dues swelled. That finding is borne out by the record. Rule 8 of the Rules of 2012 requires the charges to be paid in advance by the tenth day of each month, and requires unpaid dues to be adjusted within a week. An allotment made for three months was nevertheless allowed to run for eleven years, and dues were allowed to accumulate for more than five years before any demand was made. That the charges are recoverable is a statement about the rights of the SWO. An organisation which prescribes monthly payment in advance is expected to work its own rules, and had they been worked as written, neither the petitioner nor the public exchequer would have been placed in the present position. I leave the matter there, for the Establishment Division and the SWO to consider as they see fit.

46. In summary: (i) the Rules of 2012 were validly made under Fundamental Rules 45 and 45-A, which permit different principles for different classes of residences; the ten per cent ceiling is drawn from an Audit Instruction which does not apply to the petitioner, and Fundamental Rule 45-A does not avail an allottee of a temporary hostel who draws house rent allowance and occupies a room singly at her own request; the challenge is also belated and inconsistent with her own conduct; (ii) the liability was examined at her instance by the Wafaqi Mohtasib and by the President, within their jurisdiction and on the merits, the receipt of 14.01.2019 does not discharge it, and the remaining disputes are questions of fact; (iii) the

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recovery is authorised by rule 8(2) of the Rules of 2012 and by the petitioner's own agreement, and has been spread over sixty one months.

47. For the foregoing reasons, this petition is devoid of merit and is accordingly dismissed, subject to the observation in paragraph 45 above. The pending miscellaneous applications stand disposed of. There shall be no order as to costs. A copy of this judgment shall be sent to the Secretary, Establishment Division, and to the Director General, Staff Welfare Organization, for information.

(AYYAZ SHAUKAT)
JUDGE

Announced in open Court on **09.10.2026.**

JUDGE

Saeed.

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