JUDGEMENT SHEET

IN THE ISLAMABADHIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No. 2479 of 2023

Sumaira Nazir Siddiqui
Vs.
Ministry of Housing and Works through its Secretary and others

PETITIIONER BY: Hafiz Irfan Shabbir Kayani, Advocate for the petitioner in W.P No. 2479/2023.
Ch. Abdul Rehman Hur Bajwa and Mr. Atif Shafique, Advocates for petitioner in W.P No. 2624 of 2023.
Ch. Muhammad Asad Raan, Advocate for petitioner in W.P No. 2516/2023.

RESPONDENTS BY: Mr. Mansoor Usman Awan, Attorney General for Pakistan, Mr. Munawar Iqbal Duggal, Additional Attorney General, Mr. Fazal-ur-Rehman Khan Niazi, Deputy Attorney General and Mr. Aqeel Akhtar Raja, AAG.
M/s Rizwan Faiz Muhammad, Barrister Afzal Shinwari and Sardar Haseeb Ahmed, Advocates for respondent No.7.
Mr. Azhar Naveed Shah and Syed Bilal u din Bukhari, Advocates for respondent No.9.
Mr. Taimoor Aslam Khan, Advocate for respondent No.8.
Raja Inam Amin Minhas, Ch. Waqas Zamir and Mr. Qasim Soomro, Advocates for respondent No.10.
Mr. Attaullah Hakim Kundi, Advocate for respondent No.10.
Ms. Rushma Fawad, Deputy Secretary and Mr. Waqas Ahmed Burlas, DS/Joint Secretary (Look after charge), Ministry of petroleum.
Mr. Usman Arif Rai, Dy. Director Legal, Power Division.
Mr. Shahzad Khan Bangash, Secretary Ministry of Housing, Mr. Waqas Ali Mahmood, Additional Secretary and Mr. Muhammad Ashfaq Ghumman, Sr. J. Secretary (Admin) Ministry of Housing & Works.
Mr. Tanveer Haider, Joint Estate Officer and Mr. Muhammad Adnan, Assistant Director, Estate Office.
Raja Naeem Akbar, Federal Law Secretary, Mr. Wajid Aziz Qureshi, Assistant Solicitor and Mr.

Muhammad Umar Aziz, Deputy Secretary Admin, Ministry of Law and Justice.
Hafiz Shoukat Ali, Joint Secretary, Mr. Khurram Shahzad, S.O(E) and Mr. M. Sultan, S.O Litigation, Establishment Division.

DATES OF HEARING: 23.08.2023, 01.09.2023, 19.09.2023, 25.09.2023 and 26.09.2023.

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BABAR SATTAR, J.- This judgment shall decide the instant petition as well as Writ Petition No. 2516 of 2023 and Writ Petition No. 2624 of 2023.

2. The petitioner in Writ Petition 2479 of 2023 is aggrieved by letter dated 02.08.2023, pursuant to which accommodation allocated to the petitioner through allotment letter dated 21.11.2022 has been cancelled by the Ministry of Housing and Works ("***Ministry of Housing***"). In Writ Petition 2624 of 2023 the petitioner has filed the petition on the apprehension that his allotment of accommodation which had been allotted to him on subject-to-vacancy basis will be cancelled and prays that such cancellation be averted. The petitioner in Writ Petition 2516 of 2023 has also prayed that his allotment of accommodation which had also been allotted on subject-to-vacancy basis be prevented from being cancelled.

3. The learned counsel for the petitioner in Writ Petition 2479 of 2023 stated that the petitioner was a retired civil servant. She was re-employed as a Member of the Anti-Dumping Appellate Tribunal by letter dated 27.09.2019 and her terms and conditions of service were prescribed through an appointment letter issued pursuant to Section 67(2) of the Anti-Dumping Duties Act, 2015 **("Anti-Dumping Duties Act")**. Her contract

stated that she was entitled to residential accommodation as a civil servant. In view of the petitioner's contract, Ministry of Housing issued her an allotment letter after seeking an opinion from the Ministry of Law and Justice ("**Ministry of Law**") dated 01.09.2021, in which it had been opined that Rule 3(4) of the Accommodation Allocation Rules, 2002 **("Accommodation Rules")**, would not be attracted in the petitioner's case in view of Section 78 of the Anti-Dumping Duties Act, which gave its provisions overriding effect over other laws. Such opinion was rendered by the Ministry of Law while following a previous precedent in case of Mr. Jamil Ahmed, who has also been afforded accommodation after superannuation as he was holding a post created under the Benami Transactions (Prohibition) Act, 2017. The learned counsel stated that it was on the basis of such opinion of Ministry of Law that the allotment letter was issued to the petitioner in relation to an accommodation in Category Type-I that was previously allotted to and was in possession of her husband, who also retired as a Federal Secretary. He further submitted that the impugned cancellation letter had been issued without notice in breach of the petitioner's due process rights and was based on advise rendered by the Ministry of Law dated 27.07.2023, which had not been shared with the petitioner. The impugned cancellation letter had been issued after approval of Secretary, Ministry of Housing, who under rule 29 of the Rules was the appellate authority against any decision rendered by the Estate Office. He stated that given that the impugned cancellation letter has been issued with the approval of the

appellate authority under the Rules, the remedy of appeal and revision as provided under the Rules has become illusory.

4. The basic allegation in the petition is that the petitioner has been treated in a discriminatory and whimsical manner by the Ministry of Housing and the Ministry of Law and not in accordance with law. The allotment of official accommodation is regarded by the Federal Government as state largess to be distributed amongst favored federal government servants **("FGSs")** in a hushed manner based on extraneous considerations that prevail with civil servants exercising authority on behalf of the Federal Government at any given time, including, *inter alia*, cadre camaraderie and favoritism. Allotment of accommodation is not treated as a right and entitlement of state officials to be upheld in accordance with the date of entitlement and seniority as reflected in General Waiting Lists **("GWLs")** to be maintained under the Accommodation Rules, in a just, fair and reasonable manner. It was the petitioner's case that while she was allotted accommodation in Category Type-I after superannuation as Federal Secretary, upon being rehired in MP1 scale, notwithstanding Rule 3(4) of the Rules, on the basis of a note generated by the Ministry of Housing and supported by Ministry of Law, the allotment was cancelled once a different set of civil servants came to control the reigns of Ministry of Housing and Ministry of Law. Given the allegation of colorable exercise of authority in breach of Section 24-A of the General Clauses Act and the guarantees of Articles 4, 9 and 25 of the Constitution, the Court directed the Ministry of Housing to file a detailed report reflecting details of allotments

made in Category Type-I under the Accommodation Rules, while identifying allotments made in breach of such rules. In view of the report filed, the allotment made to certain FGSs stood out as having been made, *prima facie*, not in accordance with Rules. Notices were issued to such FGSs to afford them an opportunity of being heard, as adjudication of the manner in which allotments were made by Ministry of Housing in Category Type-I could affect their interests as well. The report filed by the Ministry of Housing also reflected names of judges of Islamabad High Court **("IHC")** as having been allotted accommodation under Rule 6(7) of the accommodation rules and/or having been issued subject-to-vacancy allotment letters under such rules. The Federation was therefore also asked to explain how judges of IHC were being treated as FGSs to be allotted accommodation under the Accommodation Rules. And whether or not such treatment of judges, whose allotments automatically came into contention in allotment disputes amongst FGSs (as their names were reflected in allotment lists maintained under the Accommodation Rules, which created a perception that they were in competition with FGSs for allotment of accommodation), was not a breach of the principle of separation of powers and independence of the judiciary.

5. The learned Attorney General appeared on behalf of the Federation. He stated that having perused the order of this Court dated 23.08.2023, he wished to make a statement with the following submissions on behalf of the Federation:

1. The Federation concedes that allotment of residences to judges is subject to provisions of the High Court

Judges (Leave, Pension and Privileges) Order, 1997 **("Presidential Order")** read together with the Fifth Schedule of the Constitution. The judges are entitled to be provided accommodation on the day of their appointment and throughout the term of their service. Their entitlement to provision of accommodation by the State is governed by the Presidential Order and not by the Accommodation Rules.

2. The IHC was established in 2010 and the Federal Government has been delinquent in discharging its responsibility to provide accommodation to judges of IHC in accordance with provisions of the Presidential Order. The Federal Government will remedy the wrong. Five of the eight serving judges of IHC have been provided accommodation. The remaining three serving judges will be provided accommodation in Category Type-I by allotting them the next three houses that fall vacant and available for handing over possession. Further, another two houses will be placed at the disposal of IHC to ensure that when the two vacant positions of judges are filled at IHC, the State is able to discharge its obligation to the newly appointed judges to provide them accommodation on the day of their appointment.

3. The matter of failure of provision of residences to judges by the Executive in accordance with the Presidential Order impinges on the independence of the judiciary. Under the scheme of separation of powers

prescribed by the Constitution, judges should be afforded the entitlements that are prescribed by law and constitute the terms of their service and should not be required to chase after the Executive to be granted such entitlements as a favor.

4. Judges are to be afforded residences by the state under the Presidential Order throughout their service and FGSs are entitled to accommodation subject to availability on the basis of their priority/seniority and/or placement on the General Waiting List. The names of judges will be removed from the list of allottees maintained under the Rules to ensure that there exists no perception that judges are to be allotted houses from the pool that is reserved for FGSs or that judges are to be placed on the same waiting list as FGSs and compete for allotment of houses alongside BS 21-22 officers. The list maintained for purposes of Category Type-I accommodation under the Rules will be rectified immediately.

5. The Federal Government will expedite the process of construction of residences for judges of IHC as has been done for the judges of the Supreme Court. The process of preparing a PC-1 for allocation of funds for construction of residences on a six-acre plot reserved for such purpose and allotted by CDA will be completed by March 2024, so that appropriate allocations can be made in the budget in next financial year. The Federal Government will take all necessary measures to allocate

funds and complete the construction of accommodations at the earliest.

6. The manner in which the allotments are made to FGSs pursuant to the Accommodation Rules leaves much to be desired. There are concerns regarding lack of transparency and arbitrariness and allotments have been made out of turn. The Government will involve the Ministry of Information Technology (IT) to create a database of all FGSs/state employees who are entitled to allotment under the Rules across all categories of accommodation. With the help of the Ministry of IT, the Ministry of Housing will create a dashboard on its website which will reflect the date of vacation of accommodations in each category along with waiting lists for all grades and cadres so that the manner in which accommodations become available and get allotted is transparent and the merit of such allotments is readily verifiable, leaving little room for arbitrariness or favoritism. Such exercise will be undertaken within a period of thirty days.

7. The Rules do not support issuance of allotment letters on a subject-to-vacancy basis. The practice has created lack of transparency and room for arbitrariness. The Federal Government will bring this practice to an end. All allotments will be made in accordance with GWLs for all grades and a priority list will be maintained for officers of BS-22 under rule 6(7) of the Rules.

6. The Secretary, Ministry of Law and Justice ("**Ministry of Law**") appeared before the Court in compliance with the order dated 23.08.2023 and reiterated the submissions made by the learned Attorney General with regard to the provision of accommodations to the ten judges of IHC and the timeframe for preparation of PC-I and the subsequent steps to be taken by the Federal Government to build residential accommodations for IHC on the six-acre plot allocated for such purpose by CDA. A report to such effect was subsequently filed.

7. The Secretary Ministry of Housing appeared in person and submitted that a report in compliance with order dated 23.08.2023 had been filed. This fresh report stated that some of the submissions made in the previous report, also authorized by Secretary Ministry of Housing, regarding allotments in Category Type-I were erroneous and need to be recalled. This included submissions made in relation to the allotment of a Category Type-I accommodation to Mr. Rashid Mehmood, Secretary Ministry of Energy, at a time when he was a BS-21 officer and at Serial No. 112 of the GWL. The Ministry of Housing thus submitted two reports with regard to allotments in Category Type-I accommodation within a fortnight, which were in conflict with each other. Mr. Rashid Mehmood, Mr. Kamran Ali Afzal and Mr. A.D. Khowaja, all FGSs in BPS-22, whose allotments appeared, *prima facie*, to not be in consonance with the Accommodation Rules, also filed his own responses and affidavits pursuant to order dated 23.08.2023.

The Scheme of Accommodation Rules

8. Section 3 of Civil Servants Act, 1973 **("Act")** provides that the terms and conditions of civil servants shall be in accordance with the provisions of the Act and the Rules framed thereunder. In exercise of authority under section 25 of the Act, the Federal Government has promulgated Accommodation Rules. Section 2(g) of the Accommodation Rules defines an FGS as *"a person who is appointed in a Ministry, Division or an Attached Department against a regular post and certified as such by the concerned Ministry, Division or Department excluding incumbents of posts filled on daily wages, work charged basis or hired from contingencies, and adhoc basis."* Rule 3 prescribes the eligibility of FGSs to residential accommodation owned, hired or requisitioned by the Federal Government. Rule 3(1) provides that all married FGSs (and certain categories of unmarried FGSs) working in "Ministries or Division or Attached Department" are eligible to be provided accommodation. Rule 3(4), germane to the petitioner's case, provides the following:

> *(4) Persons employed on contract in Government pay scale in an eligible Government department mentioned in sub-rule (1) shall be eligible in accordance with terms and conditions of his appointment for allotment of Government accommodation or hired accommodation.*
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> *Provided that no Federal Government Servant re-employed after superannuation on contract against any position in any government organization, attached department or autonomous body shall be eligible for allotment or retention of Government's accommodation.*

9. To be eligible for provision of accommodation a person must qualify (i) as a FGS working in Ministries, Divisions, or

Attached Departments that do not maintain their own pool of accommodation or have funds for hiring of houses, or (ii) a person employed on contractual basis in "Government pay scale" in Ministries, Divisions, or Attached Departments that do not maintain its own pool of accommodation or have funds for hiring of houses. Rule 3 also prescribes certain exclusions, including where a FGS or his/her spouse or dependent children own a house at the station of their posting. Rule 5 provides for classification and entitlement of accommodation and states that FGSs in Basic Pay Scale (BS) 21-22 are entitled to Category Type-I accommodation. Rule 6 prescribes the manner in which allotment is to be made and requires the Estate Office to maintain a GWL of entitled FGSs who are to be allotted accommodation in accordance with their placement on the GWL. The placement on the GWL is determined from the date of entitlement of a FGS to his/her class of accommodation and where the date of entitlement is similar the FGS with greater length of service is granted priority. And where both the date of entitlement and the length of service are identical, priority is determined on the basis of date of birth. Rule 6(6) provides that where a FGS is transferred or sent on deputation to an outstation (i.e. other than where he is seeking accommodation), the FGS carries his/her seniority to be allotted accommodation at such new station. Rule 6(7) provides that Federal Secretaries and Officers in BS-22 are to be given priority in allotment of accommodation. Other sub-provisions of Rules 6 prescribe how priority is to be accorded to certain other FGSs not relevant for our present purposes. Rule 7(1) then clearly provides that, "*the*

allotment of Government owned accommodation shall be made to the most senior FGS on GWL of a particular class or category of accommodation". Rule 3 read together with rules 5 and 6 therefore provide that the Federal Government shall maintain a GWL on the basis of which accommodations are to be allotted guided by the principle of seniority/date of entitlement. Officers in BS-22 are to be given a priority and within the category of Officers of BS-22, it is once again the principle of seniority/date of entitlement that guides the sequence in which allotment of accommodation is to be made under rule 6(7) read with rule rule 7(1).

10. Rule 10(1) provides that a FGS must take over possession of accommodation within ten days of issuance of an allotment letter. Rule 10(2) provides consequences of failure to do so by stating that non-acceptance of allotment and non-occupation of the accommodation within ten days of allotment without any cogent reason renders the allotment liable to be cancelled without notice. This penal clause reflects that compliance with rule 10 is mandatory. Rule 11 prescribes a mechanism of how accommodation is to be vacated. Rule 15 regulates the entitlement of FGSs to retain accommodation. Rule 15(2) provides that where an allottee reaches the age of superannuation or his/her contract expires a serving spouse or child of such allottee living with the allottee may be allotted the same accommodation, if the spouse or child is eligible and otherwise entitled for accommodation in the same category of accommodation. Rule 15(4) provides that where an allottee is transferred or sent on deputation out of station he/she may

retain the accommodation till being posted back with the permission of the Ministry of Housing and Works, provided that he/she does not claim accommodation or house rent at the new place of posting. Rule 15(4) further provides entitlement for an eligible FGS to retain accommodation if he/she is posted to an ineligible department or organization at the same station. Rule 15(5) regulates the entitlement of FGS to retain accommodation while on training or on study leave.

11. Chapter IX of the Accommodation Rules deals with cancellation of allotment and an ejectment of allottees. Rule 16 prohibits subletting. Rule 17(1) provides that, "*no FGS shall keep more than one accommodation at the same time in his possession.*" The consequence of keeping more than one accommodation is prescribed under rule 17(2) i.e. cancellation of all houses and flats in his/her possession. Likewise, rule 20(1) provides that, *"if an allottee or his family does not ordinarily reside in the allotted accommodation or allows some other person to live in the allotted accommodation, the allotment shall be liable to be cancelled."*

12. Rule 25 prescribes penalties for unauthorized accommodation, including the liability of an FGS to criminal proceedings where he/she is found in illegal possession of accommodation. Rule 27 requires the Establishment Division or the head of the office of the allottee as well as the allottee himself to report to the Estate Office, within a fortnight, details regarding his/her transfer, retirement, resignation, dismissal or removal from service.

13. In view of the scheme of the Accommodation Rules, the following is evident:

1. To be allotted accommodation, the FGS or a person employed on contract in government pay scale must first establish eligibility by exhibiting that he/she is serving a Ministry, Division or eligible Attached Department (that does not maintain its own pool of accommodation and has not been allocated funds for hiring of houses).

2. A contractual employee must not only establish that (i) he/she is serving in an eligible government department (i.e. Ministry, Division or Attached Department not maintaining its pool of accommodation and not in possession of funds for hiring of houses), (ii) is serving on contract in "Government pay scale", and (iii) is not a FGS reemployed after superannuation.

3. Those eligible for allotment of accommodation are to be allotted accommodation on the basis of their placement on the GWL, which is determined on the basis of their seniority and date of eligibility for allotment in the relevant category.

4. There are certain categories of FGSs who are to be given a priority over others, including, *inter alia*, FGSs in BS-22 pursuant to rule 6(7) of the Accommodation Rules. Rule 6(7) is to be read with rule 7(1) and consequently amongst the FGSs in BS-

22 allotment of accommodation is to be made on the basis of seniority and date of entitlement i.e. date of promotion to BS-22.

5. Rule 10 when read together with rules 2(b), 11(7), 20 and 27 envisages that an allottee will occupy the accommodation allotted within ten days of the issuance of the allotment letter and failure to do so entails penal consequences, including cancellation of allotment and placement of the allottee's name at the bottom of the relevant GWL.

6. Rule 15 read together with rules 17 and 27 regulates the retention of accommodation by a FGS when he/she is posted out of station, or to ineligible government department or organization at the same station or posted for purposes of training or when an FGS is on leave. The rules do not allow retention of accommodation when an FGS is transferred to an office that affords designated accommodation.

7. Rule 15(2) and 15(2)(b) allow the retention of accommodation by spouse or child who is eligible and as well as entitled for accommodation in the same category of accommodation. Rule 15(4) provides that an allottee who is in possession of an accommodation may retain the same even when transferred and posted out of station so far as he/she does not claim accommodation or house rent at the new place of posting.

14. The Accommodation Rules clearly envisage that an FGS will only be provided accommodation at the station at which he/she has been posted to serve. Rule 15(4) and 15(5) provide limited exceptions to this principle by allowing an allottee in possession of accommodation to retain the same in certain limited circumstances. The Accommodation Rules, however, do not provide for or allow allotment of accommodation to a FGS afresh at a station other than the one at which he/she is serving.

15. Rule 17 prohibits the allotment of more than one accommodation by the Federal Government to an FGS and is accompanied by a penal provision requiring cancellation of all accommodations in the event that an FGS retains more than one accommodation. As the Accommodation Rules regulate the overall entitlement of FGSs to accommodation, who under Section 10 of the Civil Services Act are also posted to provinces and other organizations on deputation, Rule 17 cannot be read as making a distinction as to whether an FGS has been provided accommodation by the Federal Government or by a Provincial Government (or another organization). The rule that no FGS retain more than one accommodation also makes policy sense. State accommodation is a scant resource. It would be inequitable to allow an FGS to be simultaneously allotted multiple accommodations across cities, while others wait in a long queue to be allotted one at his/her station. This is further highlighted by rule 6(6) which provides that an allottee when transferred or sent on deputation out of station carries his seniority to be allotted accommodation with him and is to be allotted accommodation at the new station giving him the benefit

of such seniority. The Accommodation Rules therefore envisage that an FGS will be allotted accommodation at the station at which he/she is serving, subject to provisions of rule 15 which provide for the retention of accommodation at a station other than the one at which FGS is serving when he doesn't claim accommodation or rent at the new station. Rules 16, 20 and 25 highlight that the accommodation allotted pursuant to Accommodation Rules is to be used by the FGS for his/her own purpose and that such accommodation cannot be left idle. Thus rule 20(1) provides that where an allottee or his family does not ordinarily reside in an accommodation or allows someone else to live in such accommodation, the allotment is to be cancelled. Rules 6(6), 15(4), 17 and 27 when read together require that an allottee who has been transferred to an office or post that has designated accommodation must take possession and occupy such occupation and is not entitled to retain any other accommodation. The reason is simple: no FGS other than the one transferred to a post can occupy or utilize designated accommodation that comes with the post. This makes policy sense too. It would be imprudent to allow an FGS to retain an accommodation that falls within a general pool from within which allotment is to be made to all entitled FGSs, while keeping a designated accommodation idle and out of use for himself and other FGSs. The only exception appears to be rule 15(4) that explicitly allows FGSs transferred or sent on deputation out of station to retain accommodation within a station to the extent he/she is in possession and occupation of such accommodation

and does not claim either accommodation or house rent at the new place of posting.

16. Rule 27 then provides for a reporting regime where transfers, retirements, resignations or dismissals etc. are to be reported by the Establishment Division and/or the office of the allottee as well as the allotte himself/herself to ensure that the rules in relation to retention of accommodation, clearing of dues and/or transfer of seniority for allotment at another station can be enforced. The Accommodation Rules provide a detailed seniority-driven mechanism for allotment of accommodation. The entitlement of an FGS stands accrued in favour of FGS from the date of his/her entitlement to a class of accommodation. The exceptions to such entitlement, for example under rule 6(7) or rule 6(8) is also provided within the rules. Under Rule 3(4) a select category of persons employed on contract in Government pay scales are also declared eligible for accommodation when serving in an eligible government department. But such entitlement would also accrue from the date of grant of eligible contract. And allotment of accommodation to such contractual employees can only be made in accordance with a GWL maintained for purposes of such contractual employees in view of the rule 7(1) of the Accommodation Rules. In other words, allotments can only be made on the basis of seniority/date of eligibility as reflected in the GWL to be maintained for purposes of all categories of accommodation and priority lists of eligible persons under exceptional categories, such as officers of BS-22 for purposes of rule 6(7) and FGSs who return from foreign assignments for purposes of rule 6(8).

17. We will now apply the features and principles of the Accommodation Rules, as enumerated above, to determine the eligibility of the petitioner as well as to determine whether or not the Federal Government is liable for discriminatory or arbitrary exercise of authority in grant or cancelation of allotment to other FGSs within Category Type-I accommodation.

Entitlement of the petitioner under Accommodation Rules.

18. The petitioner is a retired BS-22 FGS. After superannuation, she was initially appointed as Member of the Federal Services Tribunal, from which position she resigned upon being appointed as Member of the Anti-Dumping Appellate Tribunal established pursuant to section 64 of the Anti-Dumping Duties Act, 2015. It is the petitioner's case that she is entitled to be allotted Category Type-I accommodation pursuant to rule 15(2)(b) of the Accommodation Rules. This rule is to be read with section 78 of the Anti-Dumping Duties Act, which gives overriding effect to provisions of such Act where they are in conflict with other laws for the time being in force. Rule 3(4) explicitly deals with the eligibility of the contractual employees as has been discussed above. Rule 3(4) declares persons employed on contract (*"in government pay scale in an eligible government department mentioned in sub-rule 1"*), eligible in accordance with terms and conditions of their appointments. The petitioner has been appointed against a post pursuant to sections 64 and 65 of the Anti-Dumping Duties Act. Section 67 of the Anti-Dumping Duties Act regulates the terms and conditions of the Chairman and Members of the Anti-Dumping Appellate Tribunal. Section 67(2) provides that, *"the terms and conditions*

of the Chairman and members of the Tribunal shall be as may be prescribed". In exercise of such authority, Federal Government has promulgated the Chairman and Members of the Anti-Dumping Appellate Tribunal (Terms and Conditions of Service) Rules, 2017. The said Rules prescribe the manner in which appointments are to be made. Rule 11 states that, "every *member shall be entitled to a salary as is admissible to a person in MP-I scale or on such terms and conditions as may be specified by the Federal Government at the time of appointment."* Rule 12 addresses the entitlement of members of the Tribunal to medical treatment. Rule 13 regulates their entitlement to grant of leave.

19. In view of rule 11 of the Chairman and Members of the Anti-Dumping Appellate Tribunal (Terms and Conditions of Service) Rules, 2017, the chairman and members of the Anti-Dumping Appellate Tribunal are appointed in MP-I Scale. MP-1 Scale is then defined under rule 2(c) as "*the management pay scale-I notified by the Federal Government."* The first point to note here is that management pay scale is higher than and different from Government pay scales. The policy of establishing management pay scales was enumerated by office memorandum dated 18.08.1998 and the concept was to provide for lump-sum compensation to attract professionals from the private sector to be appointed on contract against top management positions in the public sector and to provide them such salary and benefits that public sector management positions become attractive. This is why management position pay scales are higher than government pay scales. The management position pay scales

have been notified pursuant to various policies and the latest policy was adopted through office memorandum dated 24.05.2021 and is titled "Management Position Scales Policy, 2020". The policy itself does not contemplate the grant of official accommodation to contractual employees hired against MP-1 positions. Rule 3(4) of the Accommodation Rules explicitly ousts MP-1 employees from the scope of the Accommodation Rules. Affording contractual employees, who do not fall within the definition of FGSs, accommodation under the Accommodation Rules is an exception and is narrowly carved out for such contractual employees who are appointed in "Government pay scales" in an "eligible" government department. The petitioner is neither a contractual employee appointed in government pay scale nor is the Anti-Dumping Appellate Tribunal, established under section 67 of the Anti-Dumping Duties Act, an eligible government department pursuant to rule 3(1) of the Accommodation Rules. The Anti-Dumping Appellate Tribunal is neither a Ministry or Division nor an attached Department in view of Schedule-I and Schedule-III of Rules of business, 1973. Thus, pursuant to rule 3(4) the petitioner is neither a contract employee in government pay scale nor appointed in an eligible government department to be able to claim eligibility for allocation of accommodation under the Accommodation Rules.

20. The proviso to section 3(4) then provides that, "*no Federal Government Servant re-employed after superannuation on contract against any position in any government organization, attached department or autonomous body shall be eligible for allotment or retention of Government's accommodation.*" This

rule squarely addresses the issue of entitlement of FGSs who are reemployed after superannuation in any position by the government. The petitioner is admittedly a FGS who retired in BS-22 and has been reemployed against MP-1 position as Member of Anti-Dumping Appellate Tribunal. Thus even if she fell within the scope of rule 3(4) that caters for limited eligibility for contractual employees in Government pay scales, she would still stand ousted by virtue of proviso to rule 3(4) which does not admit of any ambiguity.

21. The petitioner claims entitlement to accommodation under rule 15(2)(b) which states that, *"the serving spouse or children living with FGS may be allotted the same accommodation if he is eligible and otherwise entitled for accommodation…"* A precondition for any claim pursuant to rule 15(2)(b) is that the spouse of an FGS must be eligible and entitled for accommodation to retain an accommodation originally allotted to the spouse of such person. Admittedly, the petitioner's husband also retired in BS-22 and during service was allotted a Category Type-I accommodation. He retired in 2019 and was subsequently reappointed to an MP-I position. The petitioner likewise retired as a BS-22 Officer and was subsequently appointed to an MP-I position. Both of them continue to garner the benefits of pension etc. as retired FGSs. They also continue to avail the benefits of the salary packages afforded to MP-I officials. This, however, does not derogate from the fact that the petitioner in view of rule 3(4) as well as proviso to such rule is neither eligible to be granted accommodation nor is entitled for category Type-I accommodation under the

Accommodation Rules or the Management Position Scale Policy, 2020 or even under the Chairman and Members of the Anti-Dumping Appellate Tribunal (Terms and Conditions of Service) Rules, 2017. It is the petitioner's claim that pursuant to notification of her appointment she was issued a contract on 27.09.2019 which provides in clause 17 against the head of residential accommodation: "as admissible to civil servant". It has already been explained above that in view of rule 3(4) and the proviso to such rule, the petitioner being an MP-I scale officer and retired FGS is not entitled to accommodation and the entitlement to such accommodation is explicitly ousted by the proviso of rule 3(4). Consequently, all that clause 17 does by providing that she is entitled to residential accommodation as admissible to an FGS is to reiterate that as a contractual employee in MP-I scale, whose employment contract can be terminated upon one month notice in accordance with the requirement of section 66 of the Anti-Dumping, she is not entitled to residential accommodation. Even otherwise the provision of residential accommodation militates against the Management Position Scale Policy, 2020. The petitioner is entitled to management position pay scale salary and other benefits which far exceed to that just provided to Federal Government Servants in Government pay scales. There are enumerable MP-I scale positions created by the Federal Government and none of the incumbents serving against such positions are afforded Federal Government accommodation reserved for BS 21-22 officers, as the accommodation for such grades is insufficient for FGSs who have to wait for years before

they are allotted accommodation within their category of entitlement.

22. It is the petitioner's contention that she was allotted accommodation previously allotted to his husband on an opinion rendered by the Ministry of Law on the basis that section 78 of the Anti-Dumping Duties Act, 2015, gives overriding effect to provisions of Anti-Dumping Duties Act over other laws for the time being in force. And as the terms and conditions of service of members of Appellate Tribunal were determined pursuant to section 67 of Anti-Dumping Duties Act, such terms and conditions would be given priority over any conflicting provisions in any other law for the time being in force. She submitted that this opinion was formulated by Ministry of Law and reflected in office memorandum dated 01.09.2021 and was based on an opinion rendered in favour of Mr. Jamil Ahmed who had claimed accommodation on the basis of such overriding provision in section 56 of the Benami Transactions (Prohibition) Act, 2017. In response, the Federal Government has taken the position that the opinion of Ministry of Law in the office memorandum dated 01.09.2021 was a consequence of favoritism and had been extracted by the petitioner through her contacts with high officials manning the Ministry of Law in 2021. Rule 3(4) of the Accommodation Rules leaves no ambiguity that a retired FGS cannot be granted accommodation irrespective of the nature of his/her contract or the terms stated within such contract. No material has been placed before the court by the Federal Government to establish that the petitioner is liable for manipulation and extraction of an engineered opinion from the

Ministry of law. It is, however, evident from the opinion itself that projecting the overriding provision in section 78 of Anti-Dumping Duties Act to claim entitlement for provision of accommodation to the petitioner in breach of explicit provisions of rule 3(4) of the Accommodation Rules is so unreasonable an interpretation of law that no reasonable lawyer could form such opinion. Section 78 of the Anti-Dumping Duties Act constitutes a non-obstante provision. The effect of a non-obstante provision is that in case of a conflict with any other provision of law for the time being in force a non-obstante provision is utilized to resolve the conflict by giving it priority and overriding effect. Such provisions are ordinarily introduced in special laws to give provisions of such laws overriding effect over general laws. And this is in consonance with the general principle of law that special law trumps general law to the extent of any inconsistency. Section 78 of the Anti-Dumping Duties Act however has no relevance to the determination of terms and conditions of a contract afforded to the petitioner. Anti-Dumping Duties Act was promulgated to regulate the imposition of anti-dumping duties and the effect of injurious dumping in the public interest, as is evident from its preamble. For purposes of hearing appeals against decisions rendered by National Tariff Commission, the Anti-Dumping Appellate Tribunal has been constituted under section 64 of the Anti-Dumping Duties Act, 2015. The Tribunal comprises a Chairman and two members whose terms and conditions are regulated by section 67 which provides for prescription of such terms and conditions. And for such purpose, the Chairman and Members of the Anti-Dumping

Appellate Tribunal (Terms and Conditions of Service) Rules, 2017, have been enacted in exercise of authority under section 74 of the Anti-Dumping Duties Act, 2015. As has already been highlighted, the Chairman and Members of the Anti-Dumping Appellate Tribunal (Terms and Conditions of Service) Rules, 2017, do not prescribe that Chairman and members are entitled to be afforded Government accommodation. Consequently any question of conflict between the Chairman and Members of the Anti-Dumping Appellate Tribunal (Terms and Conditions of Service) Rules, 2017, and the Accommodation Rules does not arise. Further, according to the report filed by the Ministry of Law and the summary of appointment of the petitioner perused by this Court, the Federal Government (i.e. the Federal Cabinet) merely authorized the appointment of the petitioner in accordance with the Chairman and Members of the Anti-Dumping Appellate Tribunal (Terms and Conditions of Service) Rules, 2017 against MP-I scale positions. An appointment letter has been issued to the petitioner under the authority of Secretary, Ministry of Law, which has not been approved by the Federal Government. And as has already been held above the contract itself merely states that the petitioner may be entitled to residential accommodation as is admissible to civil servants. And in view of rule 3(4) of the Accommodation Rules, the petitioner as a retired FGS is not entitled to Government accommodation.

23. Learned counsel for the petitioner submitted that the petitioner bases her claim to retaining the accommodation in view of principles of promissory estoppel, legitimate expectancy

and *locus poententia*. Reliance on the said principles is misconceived. The aforementioned principles are essentially principles of equity which are employed by courts to undo any injustice meted out to a citizen. The principle of promissory estoppel applies where a citizen in view of promise made by a public functionary adversely changes his position in reliance on a promise or representation, which then renders the withdrawal of such promise unjust. In the instant case the petitioner has not adversely changed her position on the basis of any promise. Since the allotment of Category Type-I accommodation to her pursuant to allotment letter dated 21.11.2022, she has availed the benefit of such accommodation without being entitled to do so. The value of the benefit availed in view of the type of the accommodation exceeds the lump sum amount that she is entitled to in lieu of rent. And consequently, she has no basis to argue that she has been adversely affected by availing such benefit. To the contrary the Federal Government by affording her an accommodation that she was not entitled deprived other entitled FGSs of their accrued right to such accommodation and has unjustly benefited the petitioner.

24. Likewise, the principle of legitimate expectancy is not attracted in this case. As a FGS who retired in BS-22 the petitioner ought to have been well aware of the fact that in view of rule 3(4) she was not entitled to be allotted accommodation under any sort of contract offered to her by the Federal Government. Yet she sought such accommodation and was granted one. She can therefore have no legitimate expectation and she would continue to be afforded an undue benefit not

backed by law at the expense of other entitled FGSs. The principle of *locus poenitentiae* is also not attracted given that all the doctrines of equity are only applicable where the order on the basis of which a benefit or entitlement is sought is a legal order. As has been held above, the petitioner was not eligible to be afforded accommodation under the Accommodation Rules and an entitlement to such accommodation is specifically ousted by rule 3(4) of the Accommodation Rules. The allotment letter dated 21.11.2022 was in clear breach of rule 3(4) the Accommodation Rules and could vest no rights in the petitioner. The Ministry of Law has also brought on record the conduct of the petitioner. When she initially applied for the accommodation under the Accommodation Rules, she did not receive a favorable response from the Federal Government. She then filed a suit before the Civil Court. The suit was dismissed by the Civil Court on the basis that rule 3(4) of the Accommodation Rules barred grant of accommodation to the petitioner. The petitioner filed an appeal against such judgment before this Court, which was subsequently withdrawn as meanwhile the Ministry of Law issued a favorable opinion on the basis of which allotment letter dated 21.11.2022 was issued to her. In this view of the matter, the petitioner is not entitled to accommodation and the impugned cancellation letter issued to cancel the allotment in exercise of powers under the Accommodation Rules suffers from no infirmity.

25. As the initial argument of the petitioner was that the impugned cancellation has been issued in breach of provisions of law that metes out discriminatory treatment and it is a

manifestation of colorable exercise of jurisdiction by the Federal Government, which is rampant in cases of allotments under the Accommodation Rules, the Court had solicited responses and data from the Federal Government which has brought to fore multiple insidious practices that need to be addressed. While the impugned cancellation letter is in accordance with law, in view of the report filed by the Federal Government and the data provided to the Court, it is evident that Federal Government continues to exercise authority under the Accommodation Rules in a colorable and arbitrary manner guided by extraneous considerations in favour of those most influential within the Federal Government.

Mis-categorization of eligible government departments

26. As part of its report and comments the Federal Government has furnished the list of allottees who have purportedly been issued Category Type-I accommodation pursuant to rule 6(7) of the Accommodation Rules i.e. by granting them a priority for being BS-22 FGSs. The list includes the names of Judges of IHC as well as an employee of a state-owned-company, Saindak Metals Limited. Thus, IHC has been treated as an eligible government department for purposes of the Accommodation Rules along with Saindak Metals Limited, which is a company owned by the Federal Government and falls within the domain of Ministry of Petroleum and Natural Resources. In relation to allotments of Judges of IHC while the report reflected that allotment of accommodation had been made pursuant to rule 6(7) of the Accommodation Rules, the learned Assistant Attorney General subsequently clarified during

proceedings held on 23.08.2013 that accommodations to judges were allotted under clause 21 of the Presidential Order. The learned Attorney General also appeared before the Court and made a statement in this regard on 01.09.2013 which has already been reproduced above. As the Federal Government has allotted residences to Judges of IHC in Category Type-I while treating Judges at par with FGSs in BS-22 under the Accommodation Rules, it is essential to clarify the entitlement of High Court Judges.

27. The remuneration of Judges is regulated by Article 205 of the Constitution read together with Fifth Schedule of the Constitution, pursuant to which salary and privileges of High Court Judges are determined by law through Presidential Orders issued on the advice of the Federal Government. Clause 21 of the Presidential Order provides the following:

> ***21. OFFICIAL RESIDENCE ETC****.- (1) A Judge shall be entitled, without payment of rent, to the use of a residence throughout his term of office and for a period of thirty days thereafter and no charge shall fall on him personally in respect of its maintenance.*
>
> *(2) Where a Judge chooses to reside in a house not provided by Government he shall be entitled to be paid a monthly allowance of sixty five thousand rupees, and his residence shall also be maintained at Government expense.*

28. Clause 29 of the Presidential Order in the relevant part further provides that, "*subject to the provisions of this Order and such other provisions as the President may make in this behalf, the other privileges and rights of a Judge shall be determined by the rules for the time being applicable to an officer appointed by the President and holding the rank of secretary to the*

Government of Pakistan." In view of clause 21 of the Presidential Order, every Judge of the High Court is to be provided residence throughout his term of his office without payment of rent. Such right and allowance has been determined by law and forms part of the terms and conditions of service of the Judge. The scheme of such entitlement is different from that which applies to FGSs under the Accommodation Rules framed under the Civil Servants Act, 1973. While an FGS is entitled to a house subject to availability determined on the basis of placement of his name on the GWL, which accommodation is provided in lieu of a rent allowance made available to an FGS as part of his terms and conditions of service, a Judge under the Presidential Order is guaranteed the provision of residence throughout his/her term of office. Such provision of residence is not in lieu of rent. Clause 21 reproduced above clearly provides that such provision of residence is without payment of rent. Section 21(2) then provides that where a Judge chooses not to reside in a house provided by the Government, he is to be paid a monthly allowance of Rs.65,000. The payment of 65,000 rupees mentioned in clause 21(2) of the Presidential Order is not a rental payment but an allowance in lieu of a Judge not utilizing the residence provided by the Government. Within this scheme, the provision of residence throughout the term of office is guaranteed by the Presidential Order promulgated under Fifth Schedule read together with Article 205 of the Constitution and not affording such facility to a Judge is not an option for the Federal Government. Further, just as the payment of salary flows from Fifth Schedule of the Constitution read together with

the Presidential Order, the obligation of the Government to provide an accommodation to a Judge of the High Court flows from the same legal instrument. Consequently, the entitlement of a Judge to official accommodation during the term of office can neither be confused with the entitlement of FGSs to accommodation under the Accommodation Rules nor can the Judges be placed in the same queue as FGSs in BS-22 to determine the priority to be accorded to their entitlement under the Accommodation Rules. The entitlement to be provided residence by the state during the term of office can also not be confused with the entitlements that are afforded to Secretaries of the Federal Government and can be availed by Judges as well under clause 29 of the Presidential Order, which provides that the subsidiary conditions of service of a Judge include privileges and rights determined by rules for the time being applicable to Secretaries to the Federal Government. Judges can claim entitlements under rules framed for the benefit of Federal Secretaries in addition to and not in conflict with provisions of the Presidential Order. For example, the allowance admissible to a judge who refuses to reside in the residence provided by the Federal Government is Rs. 65,000 per month. A judge cannot claim the monthly rent allowance admissible to a BS-22 officers, which is more than Rs. 65,000, as such judicial allowance is prescribed by the Presidential Order. It must also be clarified that the entitlement to an official residence under clause 21 of the Presidential Order does not survive the retirement of a Judge and the official residence provided to a Judge remains the

property of the State and does not become the property of a Judge.

29. It is imperative to clarify the scope of this entitlement and the obligation of the Federal Government to make official residence available to Judges in accordance with clause 21 of the Presidential Order, as disputes with regard to allotment of accommodation under the Accommodation Rules come before the High Court and are to be adjudicated by Judges of the High Court. In the event that names of Judges of the High Court are also reflected in the GWL maintained by the Federal Government for purposes of allotment of accommodation in Category Type-I, it automatically creates a perception of potential conflict of interest where Judges of the High Court can be deemed to have an interest in the manner in which allotments are made under the Accommodation Rules. This state of affairs can obviously not be countenanced. A Judge cannot possibly be put in a situation where he/she is seen as a Judge in his own cause. In the oath sworn by a Judge under Article 194 of the Constitution, a judge swears that he/she will not let his/her personal interest influence his/her official conduct. Similarly the code of conduct to be observed by Judges of the Supreme Court of Pakistan and High Courts as notified by the Supreme Court Judicial Council states in Article-IV that a Judge must decline resolutely to act in a case involving his own interest, and further that "*to ensure that justice is not only done, but is also seems to be done and a Judge must avoid all possibility of his opinion or action in any case being swayed by any consideration of personal advantage, either direct or indirect.*"

30. Our Constitution is based on trichotomy of powers where the judiciary is independent of the executive, which is why Judges have been afforded constitutional protections and are obliged to dispense justice in such manner that justice is not only done but is also seems to be done. Within this scheme, the salary, privileges, allowances and rights of a Judge are determined by the Presidential Order to ensure that a Judge is not required to chase after his/her privileges and entitlements, and to exclude any temptation to extract benefits from the executive branch of the State. In the event that a Judge is not afforded a residence at the beginning of his term of office, as required by clause 21 of the Presidential Order, and he/she is forced to scurry between Ministries of the Federal Government to secure his/her rights and entitlements under the Presidential Order, it could undermine his/her ability to dispense justice as a neutral arbiter of the law without considerations of fear and favor, especially when he/she sits in judgment over disputes amongst FGSs and between FGSs and the Federal Government.

31. It was in view of these considerations that the Federal Government was put on notice to explain how Judges of IHC were reflected as having been allotted accommodation under rule 6(7) of the Accommodation Rules or placed on GWL maintained by the Ministry of Housing under the Accommodation Rules and further as to why allotment letters were issued to them under the Accommodation Rules and not in view of provisions of the Presidential Order. The learned Attorney General representing the Federal Government very candidly admitted the delinquency on part of the Federal Government in

providing official residences to Judges of the High Court and submitted that official residences in accordance with the requirement of clause 21 of the Presidential Order will be provided at the earliest. In consequence to the statement of the Attorney General a letter was issued by the Ministry of Housing addressed to the Registrar of IHC, stating that the next four houses that stand vacated shall be designated as official residence for Judges of IHC under clause 21 of the Presidential Order and shall be placed at the disposal of IHC. And further that the lists of accommodations allotted pursuant to the Accommodation Rules will be revised to exclude the names of Judges therefrom. The Ministry of Law also filed a report and the learned Attorney General in his statement submitted that a separate parcel of land provisionally allotted by CDA to the Ministry of Law for purposes of construction of residences of Judges already stands earmarked for purposes of construction of a residential colony for Judges of IHC, just as special residential colonies have been built for use by Judges of the Supreme Court and Members of the Federal Cabinet. The learned Attorney General represented on behalf of the Federation that a PC-1 for purposes of construction of residences of IHC judges will be prepared by March-2024 and Federal Government will seek allocation of appropriate funds in the next Federal budget. This Court appreciates the representations made by the learned Attorney General and Secretaries of the Ministry of Law and Ministry of Housing on behalf of the Federal Government. The Islamabad High Court comprises a Chief Justice and nine Judges and consequently the residential need for Judges of IHC is well

defined. Let the Federal government ensure that a total of ten residences are placed at the charge of IHC so that the same can be allotted to serving Judges of IHC, and upon the retirement of a Judge the official residence can be made available to the successor Judge appointed in his/her stead. The Registrar office can inform the Ministry of Housing as to which residence has been available to which judge, so as to prevent the need for individual Judges to engage with the Ministry of Housing or other officials of the Federal Government for provision of personal entitlements under the Presidential Order.

Saindak Metals Limited and allotment to Mr. Muhammad Razik Sanjarani

32. In view of the record produced before the Court it emerged that a house in Category Type-I had been allotted to Mr. Muhammad Raziq Sanjrani in his capacity as Managing Director of Saindak Metals Limited, a company operating in Baluchistan. Such allotment was made on 11.12.2018, purportedly under rule 12 of the Accommodations Rules, and the report reflected that Mr. Sanjrani was entitled to such accommodation up until 04.03.2046. Mr. Sanjrani had previously been allotted accommodation by the Federal Government in 2013, which is why rule 12 of the Accommodation Rules had been cited for allotment to him of the accommodation he presently possessed in Category Type-I. Neither the learned AAG nor Secretary, Ministry of Housing, was able to explain how Mr. Sanjrani was entitled to accommodation under the Accommodation Rules. The officials of the Estate Office were also unable to explain as to how at the age of 33/34 Mr. Sanjrani

qualified as a BS-22 officer entitled to be granted Category Type-I accommodation. The Court issued notices to Mr. Sanjrani to afford him an opportunity to be heard, before the Court passed any observations on the issue of arbitrary and/or illegal allotment under the Accommodation Rules that could affect Mr. Sanjrani's interest. Learned counsel for Mr. Sanjrani appeared before the Court on 15.09.2023 and sought time, which was granted. But Mr. Sanjrani still did not file a response and affidavit providing details of his entitlement to be granted official accommodation under the Accommodation Rules. The Court in its order dated 19.09.2023 recorded the following:

> *6. The subject-matter of the petition requires a comparison of like cases of allotment of government accommodation in Category Type-I under the Rules to determine whether or not the claim of the petitioner that power is being exercised by the Federal Government in a colorable manner making allotments and canceling allotments on the basis of extraneous and illegal considerations, including favoritism and nepotism is true. Mr. Sanjrani was issued a notice to inquire into his entitlement as the report filed by the Ministry of Housing and Works reflects that while being an employee of Saindak Metals Limited, Balochistan, he has been treated as a grade-22 Federal Government Servant without justification. It was to uphold his rights under Article 10A of the Constitution and to due process that he was issued a notice and given an opportunity to be heard and explain his entitlement to government accommodation reserved for senior Federal Government Servants. In the course of the proceedings the Federal Government has undertaken to digitize its database, change the manner in which the GWL is*

maintained and how applicants apply for government accommodation in a manner that applicants from non-entitled categories are unable to the same. The Federal Government has also undertaken to take corrective actions against those, who have been granted accommodation in breach of the Rules and in breach of the directions issued by the Supreme Court in Muhammad Afsar vs. Malik Muhammad Farooq (2012 SCMR 274) and by the Islamabad High Court in Waqas Ali Khan vs. Federation of Pakistan (Writ Petition No.4195 of 2022).

7. During arguments it had been conceded that Mr. Sanjrani was not entitled to be allotted Category Type-I accommodation and could not be regarded as a Federal Government Servant being an employee of a company owned by a government as the Federal Government refused to defend such allotment. An impression was created that Mr. Sanjrani had possibly been favored being the brother of Mr. Sadiq Sanjarani, Chairman Senate, and it was in view of such relationship that government accommodation in Category Type-I reserved for BS-22 and BS-21 was allotted to Mr. Sanjrani when he was 33 years of age. If the suggestion turns out to be a true, it supports the case of the petitioner that allotments under the Rules are being made on the basis of extraneous considerations, including favoritism and nepotism. This Court is however loath to accept or acknowledge such suggestion without verification. Chairman Senate occupies a hallowed office and oversees the functioning of the Upper House of Parliament and officiates as President when the office is vacant. Chairman Senate has sworn an oath to act in accordance with the Constitution and the law and not to allow his personal interest to influence his

official conduct. It is therefore unthinkable that he would use his power and influence in relation to exercise of executive authority of the Federal Government to have government accommodation allotted to his brother. It was thus that this Court found it fit to enable respondent No.10 to file an affidavit, establish his credentials to be allotted accommodation under the Rules and dispel the scurrilous suggestion that his allotment was a product of nepotism.

33. Mr. Sanjrani appeared before the Court and filed his response on 22.09.2023. He was unable to explain the basis on which he had claimed entitlement to be allotted accommodation under the Accommodation Rules. The Court was therefore constrained to issue notices to Ministry of Energy (Petroleum Division) and Establishment Division to provide details of the terms and conditions of service of Mr. Sanjrani, as it was argued on his behalf that he was an employee of the Federal Government serving under the Ministry of Energy (Petroleum Division) and had been granted equivalence to BS-22 FGSs. Mr. Waqas Ahmed, Joint Secretary, Ministry of Petroleum appeared and submitted that Mr. Sanjrani had been appointed to the position of Managing Director Saindak Metals Limited, which is a company wholly-owned by the Federal Government and fell within the domain of Ministry of Energy (Petroleum Division) for administrative purposes. He submitted that Mr. Sanjrani was appointed as MD/CEO of the Company in the year 2008 and such appointment was objected to by the Ministry of Petroleum. He was subsequently granted the status of permanent employee as Managing Director Saindak Metals Limited in the year 2011, upon recommendations of the Chief Minister and Governor of

Baluchistan, and the summary for such purposes was sent by Establishment Division to the Prime Minister, which was approved. It was submitted that the summary clearly stated that Mr. Sanjrani was holding a post the appointment against which was to be made by the Board of Directors of the company for a period of three years under provisions of the Companies Ordinance, 1984. The summary was however approved granting permanence to Mr. Sajrani's appointment. The Joint Secretary, Establishment Division, also confirmed the factual details as provided by the Ministry of Petroleum. He submitted that the summary to the Prime Minister back in 2011 documented all relevant facts, including that Mr. Sanjrani was a company employee and his appointment was regulated by provisions of the Companies Ordinance, 1984, which fell within the domain of the Board of Directors of the company. He submitted that the matter was nevertheless sent for approval to the Prime Minister as the summary has been initiated on a direction received from the Prime Minister's Office in view of the recommendation of Chief Minister Baluchistan.

34. The learned counsel for Mr. Sanjrani as well as the learned AAG were asked as to how the Prime Minister could assume the authority to appoint or confirm the appointment of the CEO of a company that was regulated under provisions of the Companies Ordinance, 1984 (now under the Companies Act, 2017). They were further asked as to how Mr. Sanjrani qualified as a FGS or was entitled to accommodation under the Accommodation Rules. In response to the first question no satisfactory response came forth. With regard to the second

question, it was candidly submitted by the learned counsel for Mr. Sanjrani that he was not a Federal Government Servant and was not entitled to accommodation under the Accommodation Rules. Mr. Sanjrani had filed an application with the Federal Government to be provided accommodation in Islamabad. Such application was approved and he was allotted Category Type-I accommodation. When asked as to who paid rent in lieu of such accommodation, the officials of the Estate Office stated that such rent was paid in cash and challans were submitted to the Estate Office. Perusal of the challans reflected that it was Saindak Metals Limited that continued to bear the burden of paying rent in lieu of accommodation allotted to Mr. Sanjrani. It is unclear from the record whether Mr. Sanjrani has been provided accommodation by the State in Islamabad in addition to any other accommodation in Balochistan. Learned counsel for Mr. Sanjrani submitted that he had voluntarily filed an application with the Estate Office seeking cancellation of his allotment during the pendency of the petition on 25.09.2023. And consequently, by order dated 25.09.2023, the Estate Office has cancelled the allotment of accommodation to Mr. Sanjrani and had given him 14 days to vacate the accommodation pursuant to rule 21 of the Accommodation Rules.

35. What is extremely intriguing about the picture that emerges is that Mr. Sanjrani as a 27-year-old was appointed as CEO of Saindak Metals Limited, when under the rules framed for management of Saindak Metals Limited, the General Managers reporting to the him as MD/CEO were required to have a minimum experience of 25 years in the relevant field. His status

as MD was clothed with permanence through a summary prepared by the Ministry of Petroleum and the Establishment Division, which was subsequently approved by the Prime Minister. All this happened despite the summary itself reflecting that the authority to appoint MD/CEO of the company fell within the domain of the Board of Directors of the company and under section 199 of the Companies Ordinance, 1984, was to be made for a maximum period of three years. It was inquired by the court as to whether Saindak Metals Limited had continued to file its statutory reports to Securities and Exchange Commission of Pakistan ("**SECP")** and whether Mr. Sanjrani had been reappointed after every three years since 2008 and/or 2011. Neither the counsel for Mr. Sanjrani nor representative of the Ministry of Petroleum opted to respond. This provides a shocking reflection of how public sector companies are being administered by the Federal Government and how they are being regulated by SECP. The question of allotment of accommodation to Mr. Sanjrani stands settled in view of the admission on part of Mr. Sanjrani that he was not entitled to accommodation under the Accommodation Rules for neither being a FGS nor an eligible contractual employee under rule 3(4). He has consequently had his allotment cancelled by the Estate Office on his own request.

36. It is not for this Court to rule over the legality of Mr. Sanjrani's appointment. But as a constitutional court, it is also not possible for the court to close its eyes to the unnerving facts revealed before it. Given that the summary for appointing the MD/CEO of Saindak Metals Limited, a company limited by shares, has been approved by the Prime Minister, which appears

to have no backing in law, the court would like to bring the matter to the attention of the Prime Minister through his Principal Secretary. With regard to the question of payment of rent for the accommodation availed by Mr. Sanjrani since 2013 that he was not entitled to, it falls within the domain of the Ministry of Petroleum as well as the office of the Accountant General to determine whether it was for Saindak Metals Limited to pay rent for an accommodation being availed by Mr. Sanjrani in Islamabad. Saindak Metals Limited is wholly owned by the Federal Government and the burden of expenses incurred by such company is ultimately borne by taxpaying citizens of Pakistan. Saindak Metals Limited, being a company, is regulated by the SECP under provisions of the Companies Act, 2017. It is for SECP to determine whether the Board of Directors has appointed the MD/CEO in accordance with law and whether the company is compliant with provisions of the Companies Act, 2017, in conducting its affairs and filing its statutory returns. Let the Registrar's Office share a copy of this judgment with the Principal Secretary to the Prime Minister, Secretary Petroleum Division, the Accountant General for Pakistan and Chairman SECP, to consider the matters highlighted above and determine, with an independent mind without being influenced by the observations of this court, whether the facts as detailed above call for any corrective action in accordance with law.

Allotment letters issued on subject-to-vacancy basis

37. The scheme of Accommodation Rules has already been detailed above. In view of provisions of Rule 6, allotments are to be made on the basis of priority accorded to FGSs according to

the GWL maintained by the Estate Office. The question of manner in which allotments were made in breach of GWL came before the Supreme Court in ***Muhammad Afsar Vs. Malik Muhammad Farooq*** **(2012 SCMR 274)**. After considering the manner in which the allotments were being made, the Supreme Court observed the following:

> *8. We are surprised to note that all the allotments till date made by the Estate Office are not on the basis of first come first get, as per the General Waiting List maintained by them under Rule 6 of the Accommodation Allocation Rules, 2002, but on the basis of some extraneous consideration orders were passed by the high-ups without assigning any reason in favour of the employees of their own choice.*

The Supreme Court further observed that the discretion assumed by the Federal Government under rule 29A of the Accommodation Rules was being abused, and under the garb of relaxation of rules the obligation to make allotments pursuant to the GWL was being flouted. The Supreme Court held that the Federal Government was not vested with unstructured discretion to relax rules "on its own sweet will", as FGSs had an accrued right to be granted accommodation in accordance with rule 6 of the Accommodations Rules, the denial of which was a breach of their right to meaningful life (which included the right to shelter/house) guaranteed by Article 9 of the Constitution. The Supreme Court consequently passed the following directions:

> *(i) that in future all the allotments will be made strictly on merits on the basis of General Waiting List; and*
>
> *(ii) Relaxation of rules under Rule 29A of the Accommodation Allocation Rules, 2002 will not be often exercised, except in the cases of hardship and that too by recording justifiable reasons for the same, after hearing the likely affected employees in the General Waiting List.*

38. The question of a manner in which the Federal Government exercising arbitrary authority under the Accommodation Rules came before this Court in ***Waqas Ali Khan Vs. Federation of Pakistan and another*** **(W.P No. 4195 of 2022)**, wherein by order dated 08.11.2022 this Court issued the following direction to the Secretary Ministry of Housing:

> *"Secretary, Ministry of Housing and Works is directed to conduct the survey of all the civil servants, living in Islamabad with reference to their place of posting other than Islamabad (Peshawar, Karachi, Lahore, Quetta etc.) and if they are enjoying Government accommodation in other Provinces, their allotment be cancelled with immediate effect in accordance with law and recommendation may also be given to the Establishment Division to initiate departmental action against those officials, who are retaining more than one accommodation by submitting false affidavit and credentials in the applications for allotment of the Government accommodation under the rules."*

39. It appears that in order to circumvent the requirement of rules 6 read together with rule 7(1) of the Accommodation Rules as well as the judgments cited above, the Ministry of Housing contrived a scheme to issue allotment letters on subject-to-vacancy basis. The effect of issuance of such allotment letters was that an entitled FGS could be issued an allotment letter on subject-to-vacancy basis in relation to an accommodation that would remain occupied by an existing allottee for five or six years. The FGS issued such allotment letter would then be treated as an allottee and not be placed on the GWL. And when an accommodation became free in any category, it could be awarded to a favored FGS without having to

worry about his/her priority on the GWL as the GWL simply doesn't include the names of all eligible FGSs not in possession of accommodation in the relevant category. In other words, the subject-to-vacancy allotment scheme sucked transparency out of the manner in which GWL is to be maintained under the Allotment Rules and constitutes a fraud on the rules. The purpose of the GWL was to create a direct link between the date of availability of accommodation in a certain category and the priority to be accorded to an FGS entitled to be granted accommodation in such category. The scheme of subject-to-vacancy allotments created a disconnect between availability of accommodation for possession and the GWL, and granted a free hand to officials within the Ministry of Housing to distribute accommodation as state largesse to favored FGSs.

40. The learned Attorney General while making his submissions on behalf of the Federation has already conceded that there is no basis in law for issuance of allotment letters on subject-to-vacancy basis. The Secretary Ministry of Housing also candidly conceded that the practice of issuing subject-to-vacancy allotment letters was not backed by the Accommodation Rules but was a practice that would be discontinued forthwith. In view of the statement of the learned Attorney General and the Secretary Ministry of Housing together with the interpretation of the Accommodation Rules above, all allotment letters issued on subject-to-vacancy basis are declared to be in breach of, *inter alia*, Rules 6, 7 and 10 of the Rules and therefore illegal and devoid of any legal authority. They will stand cancelled. The Ministry of Housing will prepare GWLs strictly in accordance with

requirements of rule 6 and priority lists for special categories created under sub-rules (7), (8) and (9) of Rule 6 (i.e. list of FGSs in BS-22 for purposes of rule 6(7) listed on the basis of the date of entitlement/promotion to BS-22, list of FGSs returning from foreign posting for purposes of rule 6(8) of the Accommodation Rules, and GWL for disabled FGSs for purposes of rule 6(9) of the Accommodation Rules). The Ministry will also include within such lists persons employed on contract on government pay scales in eligible government departments for purposes of rule 3(4) of the Accommodation Rules, so that there exist no extraordinary categories from which individuals can parachute their way into accommodations allotted under the Accommodation Rules in disregard of a GWL/priority list maintained for each category of accommodation. The learned Attorney General as well as Secretary, Ministry of Housing submitted that Ministry of Housing will create a digital dashboard with the assistance of the Ministry of Information and Technology such that the GWL/priority list for each category of accommodation is reflected on the website of Ministry of Housing together with the list of accommodations that falls within such category and the projected availability date of each accommodation in order to enable all prospective allottees on the GWL or special lists for purposes of sub-rules (7), (8) and (9) of rule 6 to be able to assure themselves that the accommodation is being allotted to FGSs in accordance with their eligibility in a transparent manner. To the extent that an FGS is unwilling to take possession of an accommodation that becomes available and an allotment letter is issued putting the FGS on

notice to take possession within ten days, as required under rule 10(1) of the Accommodation Rules, the consequence for such failure as prescribed in rule 10(2) shall follow. The Secretary, Ministry of Housing, submitted that for purposes of digitizing the required data and preparing GWLs for each category of accommodation, the Ministry of Housing would need a period of one month and that the Ministry of Housing is already in touch with experts of the Ministry of IT for such purpose. He further submitted that the Ministry of Housing will connect its digitized system with the database of NADRA (to ensure the accuracy of data) and with the Establishment Division to ensure that transfers, retirements and removals of FGSs are automatically reported to the Ministry of Housing for purposes of rule 27 of the Accommodation Rules. This Court expects that the Secretary Ministry of I.T., Secretary Establishment, Secretary Finance Division and Chairman NADRA will provide all required assistance for such purpose so that digitized GWLs can be prepared and exhibited on the website of Ministry of Housing within one month and the authenticity of the data is ensured. Let the Secretary Ministry of Housing file a report in 30 days that such digitized GWLs and priority lists are available as part of a digital dashboard on the website of Ministry of Housing.

41. During arguments it was also brought to the notice of this Court that there are various other illegal practices that afflict the provision of accommodation to deserving FGSs under the Accommodation Rules. These include subletting and renting out of accommodation allotted to FGSs, issuance of multiple allotment letters and subsequent verification of only one of them

which creates rent-seeking opportunities for employees of the Estate Office who verify the allotment letters on the basis of extraneous considerations, random inclusion of FGSs in the GWL in disregard of the principles of seniority and the date of entitlement of the FGS. The Secretary, Ministry of Housing undertook to survey the properties allotted under the Accommodation Rules to verify that only the FGSs who are allotted the accommodation in question are residing at the accommodation and such accommodation has not been sublet or rented out. He undertook to take enforcement action under provisions of Chapter X (Rules 16, 18, 19, 20, 22 and 25) of the Accommodation Rules to address the illicit practices highlighted above. Let the Federal Government also devise a mechanism for information sharing with provincial governments to ensure that FGSs are not in possession of more than one state-provided accommodation at the same time, whether provided by the Federal Government or a provincial government. Accordingly, let Secretary, Ministry of Housing comply with the directions in this regard issued in ***Waqas Ali Khan*** reproduced under paragraph 38 above.

Irregularities in allotment and retention of accommodation

42. The cases of three BS-22 officers of the Federal Government came to fore during these proceedings where the allotments did not *prima facie* appear to be made in accordance with Accommodation Rules. The Ministry of Housing in its report dated 23.08.2023 filed a list of individuals who had been provided accommodation in Category Type-I in an irregular

manner. The list included the name of Mr. Rashid Mehmood, presently serving as Secretary Ministry of Petroleum in BS-22, who at the time of allotment was an Additional Secretary serving in BS-21. According to the report he was allotted accommodation in relaxation of the GWL as he was placed at Sr. No. 112 of the list of eligible FGSs for Category Type-I accommodation. The Ministry subsequently filed another report on 31.08.2023 which sought to recall its submissions with regard to the allotment to Mr. Rashid Mehmood. It was submitted that at the time of inclusion of Mr. Rashid Mehmood on the GWL he was posted as Additional Secretary in the Ministry of National Food Security and Research. But at the time of allotment of accommodation in the year 2022 he was posted as the Secretary and that allotment letter was issued on 20.06.2022 upon vacation of a house by Mr. Waqar Ahmed on 14.06.2023. But the tabular chart with regard to allotments re Category Type-I accommodation reflected the name of Mr. Rashid Mehmood at Sr. No. 20 and still stated that on 14.06.2022 an allotment letter was issued to him while he was placed at Sr. No. 112 of the GWL. Mr. Rashid Mehmood had also been issued notices to grant him an opportunity to be heard. He took a preliminary objection that he was not a necessary and proper property. With regard to his entitlement, he submitted that in April 2022 he was appointed as Federal Secretary Incharge Power Division and after issuance of multiple reminders to the Ministry of Housing, he was issued an allotment letter dated 14.06.2022 for House No. 19 St. 10, F-6/3 Islamabad, previously allotted to Mr.

Waqar Ahmed who as Secretary to the President was living in designated accommodation.

43. When Mr. Rashid Mehmood was issued allotment letter dated 14.06.2022, he was the Additional Secretary Incharge of the Power Division and it was not until March 2023 that he was promoted from BS-21 to BS-22. And consequently, at the relevant time, he could not avail the benefit of rule 6(7) of the Accommodation Rules to be granted priority over others within the GWL for purposes of allotment of accommodation in Category Type-I. This Court asked the Secretary, Ministry of Housing as to whether Mr. Rashid Mehmood was presently entitled to be allotted accommodation in Category Type-I given his seniority and length of service in comparison with other FGSs serving in BS-22 who were awaiting allotment of accommodation in Category Type-I. The Secretary submitted that he believed Mr. Rashid Mehmood was presently so entitled, but would need to verify the record before making a representation. To the extent that Mr. Rashid Mehmood was allotted Category Type-I accommodation on 14.06.2022, when he was not at serial number 1 of the GWL for Category Type-I accommodation, or if there were FGSs in BS-22 waiting to be allotted accommodation pursuant to rule 6(7) ahead of him, the allotment letter dated 14.06.2022 would be illegal and liable to be cancelled for being issued in breach of Rules 6 and 7 of the Accommodation Rules and the directions of the Supreme Court in ***Muhammad Afsar***.

44. The second case of irregular allotment that emerged from the report and data presented by Ministry of Housing was that of Mr. Kamran Ali Afzal, a BS-22 officer presently serving as

Secretary Cabinet Division. Mr. Kamran Ali Afzal was serving as Secretary Finance in the year 2021 and was subsequently posted as Chief Secretary Punjab on 07.09.2021, which post has its own designated accommodation in Lahore. After that he was posted as Director General, Civil Services Academy in Lahore, which post has also its own designated accommodation. According to the report filed by Ministry of Housing, Mr. Kamran Ali Afzal was handed over possession of Category Type-I accommodation in April 2023 while he was still serving as Director General, Civil Services Academy, in Lahore. Mr. Karman Ali Afzal was impleaded as a party and was granted an opportunity to be heard. He too objected to being impleaded in the matter and claimed that the court was exercising suo moto powers. On merit, he submitted that he did not avail the designated accommodation as Chief Secretary Punjab or DG Civil Services Academy Lahore and consequently he had been allotted accommodation in Islamabad in Category Type-I in accordance with rule 6(7).

45. It has already been explained above that the scheme of the Accommodation Rules is to provide accommodation to a FGS at the station at which he/she is serving. This is why rule 6(6) provides that where an allottee is transferred or sent on deputation to another station, he/she carries his/her seniority and is to be allotted accommodation at the new station on the basis of his entitlement to his class of accommodation. Rule 15 regulates the entitlement to retain accommodation and rule 15(4)(a) provides that where an allottee has already been allotted accommodation and he is in possession of such

accommodation, he/she may retain such accommodation till his posting back to the station (with the permission of Ministry of Housing), provided he/she does not claim accommodation or house rent at the new place of posting. Rule 15(4)(b) and 15(4)(c) regulate the entitlement to retain accommodation for certain period where the person has been transferred to an ineligible department or another organization at the same station. Rule 17 provides that no FGS can possess more than one accommodation at the same time and rule 27 creates reporting requirements for FGSs and Establishment Division regarding the transfer of employee.

46. The Accommodation Rules do not permit the allotment of accommodation to an FGS at one station while he/she is posted at another station or while she is not posted within an eligible Federal Government department or organization at the same station. An FGS can retain accommodation already allotted to him under rule 15(4)(a) so long as he does not claim accommodation or house rent at the new station. But a FGS cannot be allotted accommodation afresh at one station while he/she is serving at another. Consequently, Mr. Kamran Ali Afzal could not be allotted accommodation in Islamabad while he was posted as Chief Secretary Punjab or DG Civil Services Academy, while serving in Lahore. Rule 17 provides that FGSs can also not keep more than one accommodation at the same time in his possession. The purpose of this rule is to create equity amongst FGSs who are entitled to accommodation in a certain category. As the availability of accommodation is limited and insufficient, it cannot be countenanced that one FGS would be endowed with

the facility of availing two accommodations while another FGS in the same grade would be denied allotment of accommodation altogether.

47. This principle would equally apply to designated accommodation. Rule 15(4) regulates the entitlement of FGS to retain accommodation upon transfer out of station or to an ineligible department or organization at the same station. Rule 15(4) does not vest in a FGS the right to elect whether or not he/she will occupy a designated accommodation afforded at the new place of transfer or will to retain an accommodation that falls with the general pool available to all FGSs. Rule 15(4)(c) on the contrary excludes reading in of the right to retention of pool property by providing that when a FGS is posted to an autonomous organization, he may retain previously allotted accommodation till such time that the organization provides him alternate accommodation. The state of maintenance of the designated accommodation creates no exception to the rule, as even the pool accommodations that allotted to FGSs are in a despicable state and are renovated at significant expense before a new allottee takes possession. A designated accommodation can only be utilized by the FGS transferred to the post that affords such accommodation. And if the incumbent does not take possession of such accommodation, it would lie vacant and the FGS would continue to share from the meager resource of accommodations available for the benefit of the general pool of FGSs in the relevant category.

48. The Secretary Ministry of Housing submitted that requiring FGSs to vacate accommodation in Islamabad while

being posted out of station or to a post with designated accommodation within the city could create hardship, as the amount of time that a FGS would be retained at a high profile post remains uncertain. If the rules are strictly applied, FGSs would need to give up possession of accommodation allotted in Islamabad when posted out and upon being posted back to Islamabad they would be left without accommodation. The answer to the concern is threefold: one, under section 10 of the Civil Servants Act, FGSs are under an obligation to serve anywhere in Pakistan against a post to which they are transferred. They cannot refuse such transfer on ground of convenience. Two, Rule 6(6) states that an allottee who is transferred out of station carries his seniority with him and is to be allotted accommodation at the new station on the basis of his date of entitlement. And three, Rule 15(4) allows retention of accommodation by a FGS at one station, if he/she doesn't claim accommodation or rent at the new station. This affords a choice to a FGS to retain allotted accommodation at one station while being posted out, so long at he/she is not posted to an office within the same station or another station that provides designated accommodation.

49. To the extent that Mr. Kamran Ali Afzal was allotted accommodation and handed possession of the same in Islamabad in April 2023, while he was serving as DG Civil Services Academy in Lahore, which came with its own designated accommodation, such allotment was in breach of Rules 6 and 17 of the Accommodation Rules, and as he was not in possession of allotted accommodation in Islamabad at the

time of his posting to Lahore in 2021, he could not seek any benefit from Rules 15(4).

49. The third case of irregular allotment that emerged during the proceedings was of Mr. AD Khawaja, a BS-22 officer from the Police Service. In view of the details submitted by the Ministry of Housing it emerged that Mr. AD Khawaja had been served cancellation letters in relation to accommodation allotted to him in Category Type-I in the year 2022 as well as in the year 2023, on the basis of rule 20 which provides that an allottee who does not live in the allotted accommodation is liable to have such allotment cancelled. Further, Mr. Khawaja had been posted as Commandant National Police Academy which position also comes with designated accommodation. Mr. Khawaja was also issued notice by this court to grant him an opportunity to be heard. He admitted that for a limited period he allowed a friend, also a BS-22 officer, to live in his accommodation while he was undergoing medical treatment in Karachi. He further submitted that he did not assume the possession of the designated accommodation of Commandant National Police Academy. He also submitted that he has been granted accommodation in Sindh House for which he was also paying rent from his own pocket. He insisted that the allotment cancellation letters issued to him were misguided and there was no irregularity in the manner in which he continued to possess the accommodation allotted to him in Category Type-I. The analysis above in relation to the obligation to occupy designated accommodation and not retain accommodation from the common pool applies squarely to Mr. AD Khawaja as well. The report filed by Ministry of Housing

reflected that Mr. AD Khawaja was not in occupation of Category Type-I accommodation and consequently the said allotment was cancelled pursuant to rule 20. The report further submitted that the cancellation letter was recalled as Mr. Khawaja filed an appeal pursuant to rule 29 of the Accommodation Rules and the Secretary, Ministry of Housing, found that Mr. Khawaja in his present capacity as Secretary to the Federal Government was residing in the allotted accommodation.

50. This Court in its constitutional jurisdiction cannot engage in a factual controversy or second-guess a finding of fact made by the Ministry of Housing. Given that he is presently posted as Secretary to the Federal Government and is not holding a post in relation to which he has been provided designated accommodation, this Court does not find that the allotment pursuant to which he occupies Category Type-I accommodation is in breach of law. Mr. Khawaja ought to have taken possession of designated accommodation for Commandant National Police Academy while he was serving against such post. But the benefit of interpretation of the Accommodation Rules, as enumerated above, was neither available to the Ministry of Housing nor to FGSs at the relevant time. It would be unfair to retrospectively apply the same to the case of Mr. Khawaja and hold that his present allotment was irregular as he failed to abide by the obligation to move to a designated accommodation when he was posted as Commandant, National Police Academy.

51. The cases of Mr. Rashid Mehmood and Mr. Kamran Ali Afzal are, however, different. In the case of the former the record reflects that he was allotted accommodation in Category

Type-I as a BS-21 officer while he could not claim the benefit of being accorded priority under rule 6(7) of the Accommodation Rules, and he was also not at the top of the GWL for Category Type-I accommodation at such time. In the case of Mr. Kamran Ali Afzal, he was allotted accommodation and handed over possession of accommodation in Islamabad at a time when he was posted at Lahore and rules do not permit allotment of accommodation out of station. Such illegalities in the allotment of accommodation cannot be condoned by this Court. This Court is, however, cognizant of the fact that Mr. Kamran Ali Afzal presently serves as Cabinet Secretary and Mr. Rashid Mehmood presently serves as Secretary Ministry of Energy. Both of them being senior BS-22 officers are eligible to be granted Category Type-I accommodation and by virtue of their seniority/date of eligibility, might even be entitled to be granted the accommodation that becomes vacant if their allotment letters are cancelled. In view of provisions of rules 6(3), (4), (5) read together with rule 7, this Court has already declared that all subject-to-vacancy allotment letters are illegal and are set-aside. Consequently, Secretary Ministry of Housing has been directed to put together a list for purposes of rule 6(7) in an order of priority based on date of entitlement and other parameters prescribed in rule 6(3), (4) and (5) read together with rule 6(7).

52. In the event that according to the priority list assembled for FGSs in BS-22 serving in Islamabad in eligible government departments and organizations, who have not been allotted accommodation in Category Type-I, if it emerges that Mr. Kamran Ali Afzal and Mr. Rashid Mehmood are entitled to be

allotted accommodation in Category Type-I as no other FGS in BS-22 ahead of them in terms of seniority is awaiting allotment of accommodation in Category Type-I in Islamabad, the cancellation of allotment letters issued to them will serve no purpose. In such case their possession of allotted accommodation ought not be disturbed. However, if, after preparation of priority list for purposes of rule 6(7) as stated above, it emerges that there are other senior FGSs in BS-22 awaiting allotment in Category Type-I in Islamabad, whose date of eligibility and entitlement precedes that of Mr. Kamran Ali Afzal and Mr. Rashid Mehmood, law, fairness and propriety would demand that the illegal allotment letters be cancelled and accommodation be offered to the most-senior BS-22 FGS serving in Islamabad, then the next one on the priority list and so forth. Secretary Ministry of Housing shall undertake such exercise within a period of 15 days and will take appropriate action for purposes of issuing cancellation letters and fresh allotment letters, if so required.

53. Given that question of irregular allotment to the Mr. Kamran Ali Afzal and Mr. Rashid Mehmood has emerged during the pendency of the petition in view of the report filed by the Ministry of Housing, it is clarified that even if it is determined that allotments either to Mr. Kamran Ali Afzal or Mr. Rashid Mehmood, or both, are not in accordance with the priority list prepared by the Ministry of Housing for purposes of Rule 6(7) and allotment letters issued to Mr. Afzal and Mr. Mehmood are to be cancelled and such accommodation is to be vacated, the allotments to such accommodations will only be made under

Accommodation Rules to the senior most FGSs in BS-22 pursuant to rule 6(7). Such accommodations shall not be considered for purposes of the representation made by the Federal Government that the next four vacated accommodations will be placed at the disposal of IHC. The question here is one of fairness and equity inter se FGSs serving in BS-22. It is the obligation of this Court to ensure that the justice is not only done but is also seen to be done and further to dispel any misconceived impression that the benefit of any observations and directions of this Court in relation to the allotments made to Mr. Kamran Ali Afzal and Mr. Rashid Mehmood could inadvertently flow toward IHC.

54. It is also essential to address the objections taken by respondents No. 7, 8, 9 and 10 for being impleaded by this Court in exercise of authority under Order 1 Rule 10 of the Code of Civil Procedure and that this Court might be assuming the exercise of *suo motu* powers not vested in it. It was clarified in paras 6 and 7 of the order dated 19.09.2023 (which have been reproduced in this judgment above) that the subject matter of the petition is discriminatory exercise of authority under the Accommodation Rules, which is tantamount to colorable exercise of powers and the abuse of authority, and the result of which is to entrench favoritism and allot accommodations out of turn devoid of fairness and transparency. The petitioner's alleged a breach of her rights guaranteed by under Article 9 read together with Article 25 of the Constitution and that the Ministry of Housing was exercising authority in breach of section 24A of the General Clauses Act. In order to adjudicate the lis it was

essential for the court to undertake an apple-to-apple comparison of allotments made within Category Type-I accommodations. And as would be evident from the length of this judgment the proceedings deciphered innumerable illegalities and irregularities that mar lawful exercise of power by the Federal Government under the Accommodation Rules. In this context where the allotment made to an individual appeared, *prima facie*, to be not in accordance with the Accommodation Rules the Court deemed it essential to issue notice to such individuals to uphold their right to due process and a hearing guaranteed under Article 10A of the Constitution.

55. It is a settled matter that High Court is not vested with *suo motu* powers under Article 199 of the Constitution. It was most recently held in ***Mian Irfan Bashir Vs. The Deputy Commissioner (D.C), Lahore and others*** **(PLD 2021 SC 571)** that the High Court is not conferred with *suo motu* powers under Article 199 of Constitution, and that there must be an application and an applicant to invoke the jurisdiction of the court for it to exercise powers under Article 199. The subject matter being adjudicated in the instant petition has been agitated by a petitioner aggrieved by the manner of exercise of authority by the Federal Government under the Allotment Rules, and that is all that this court is ruling on. The petition being adjudicated is in the nature of mandamus. It is also settled law that the court is not strictly bound by the prayer clause as articulated by a petitioner and the High Court being a constitutional dispute-resolving forum can tailor the relief to be granted to dispense justice in a fair and reasonable manner. The

petitioner in the instant case has sought issuance of declaration that the Federal Government and the Ministry of Housing are acting in an illegal, unlawful, discriminatory and arbitrary manner on the basis of mala fide. And considering such prayer the Court had sought information from the Ministry of Housing which then revealed the innumerable illegalities and irregularities that have been detailed above. This Court is therefore not exercising *suo motu* powers in enumerating the scope of the Accommodation Rules or issuing observations and directions to the Federal Government to act in accordance with law. This court has however exercised restraint and has not passed any definitive judgment with regard to the entitlement of any party that has been impleaded by the court itself. The only definitive judgment is with regard to the petitioner. The Court has therefore left the illegalities and irregularities that have come to fore to be considered and addressed by the relevant authorities within the Federal Government.

56. In view of above, these petitions are **dismissed,** with the following findings and directions:

1. The impugned cancellation letter dated 02.08.2023 suffers from no infirmity and the allotment made to the petitioner was rightly cancelled as she was not entitled to the same in view of rule 3(4) of the Accommodation Rules.

2. The submissions by the petitioner that Federal Government has continued to exercise authority in a colorable and arbitrary manner on the basis of

extraneous considerations in breach of Accommodation Rules is borne out, and the allotment made to the petitioner herself by allotment letter dated 21.11.2022 is a manifestation of the same.

3. The Federal Government has continued to allot accommodations under the Accommodation Rules in breach of rule 6 of the Accommodation Rules and the law laid down by the Supreme Court in ***Muhammad Afsar Vs. Malik Muhammad Farooq*** **(2012 SCMR 274).** It has neither transparently maintained General Waiting Lists for purposes of various categories of accommodations under the Accommodation Rules nor has put together a priority list for purposes of rule 6(7) of the Accommodation Rules on the basis of which BS-22 officers are to be allotted accommodation.

4. The issuance of subject-to-vacancy allotment letters is illegal as such allotment letters have no basis in law and/or the Accommodations Rules. Subject-to-vacancy allotment letters are a means to obscure the priority to be accorded to FGSs for allotment of accommodation in various categories of accommodation under the Accommodation Rules. Consequently, all subject-to-vacancy allotment letters are set-aside for being unlawful.

5. The Secretary, Ministry of Housing on behalf of Federal Government is directed to prepare General Waiting Lists after authentication of the data of Federal Government Servants placed in GWLs for various categories and verify the veracity of such data against the data maintained by NADRA and the Establishment Division. The Secretary Ministry of Housing will put together a priority list for purposes of rule 6(7) on the basis of date of entitlement and other criteria prescribed in rule 6 and shall include within such list all officers of BS-22 who are serving in Islamabad in an eligible government department under rule 3(1) of the Accommodation Rules and have not been allotted accommodation in Category Type-I (including those who may have been issued subject-to-vacancy allotment letters).

6. In view of the priority list compiling for purposes of rules 6(7), the Secretary will determine whether respondents No. 7 and 8 qualify to be allotted accommodation as of the date of this judgment, and if they do their possession of allotted accommodation shall not be disturbed. If, however there are senior BS-22 officers who are ahead of respondents No. 7 and 8 or either of them in the priority list compiled on the basis of criteria prescribed in rule 6, the allotment letters issued to respondent No. 7 or 8, or both, may be cancelled, and the vacated accommodation may be allotted to the senior most

BS 22 FGSs serving in Islamabad in accordance with their entitlement.

7. The Secretary Ministry of Housing will place the GWLs as well as other priority lists for purposes of rule 6 on the website of the Ministry of Housing in digital format along with a list of accommodations in relation to each category of accommodation reflecting the date of vacation for purposes of each accommodation. The waiting lists and accommodation lists shall be made available in a dashboard on the website of the Ministry of Housing, as undertaken by the Federal Government, within a period of thirty days and Secretary Establishment Division, Secretary Ministry of Information Technology, Secretary Finance Division and Chairman NADRA shall provide all required assistance for such purpose.

8. The discussion with regard to Mr. Sanjrani in paras. 31-36 of this judgment shall be brought to the attention of the Principal Secretary to the Prime Minister, Secretary Petroleum Division, Accountant General for Pakistan and Chairman SECP, by the Registrar's Office, to invite them to consider if law obliges them to take steps in relation to such matter.

9. The allocation of official residences to Judges of IHC is made under clause 21 of the Presidential Order and not under the Accommodation Rules. Secretary,

Ministry of Housing shall ensure that neither the list of allottees maintained under Accommodation Rules nor GWLs and priority lists prepared for purposes of the Accommodation Rules include names of Judges of IHC. The Secretary Ministry of Law and the Secretary Ministry of Housing will ensure that representations made by the learned Attorney General on behalf of Federal Government to comply with the obligation of the Federal Government pursuant to clause 21 of the Presidential Order are implemented.

(BABAR SATTAR)
JUDGE

Announced in the open Court on **06.10.2023**

JUDGE

Approved for reporting.

Saeed.