JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

C.R. No.141/2017
Muhammad Mudassir Sardar
Versus
Ministry of Housing and Works, etc.

Date of Hearing: 25.05.2015
Petitioner by: Ch. Muhammad Kashif Gujjar, Advocate,
Respondents by: Ms. Sitwat Jehangir, learned Assistant Attorney-General with Mr. Mumtaz Khan, J.E.O.

MIANGUL HASSAN AURANGZEB, J:- Through the instant civil revision petition, the petitioner, Muhammad Mudassir Sardar, impugns the judgment and decree dated 17.03.2017, passed by the Court of the learned Additional District Judge, Islamabad (West), whereby the petitioner's appeal against the order and decree dated 28.02.2017, passed by the Court of the learned Civil Judge, Islamabad, was dismissed. Vide the said order and decree dated 28.02.2017, the learned civil Court dismissed the petitioner's suit for declaration and permanent injunction by invoking the provisions of Order VII, Rule 11 of the Code of Civil Procedure, 1908 ("C.P.C.").

2. Learned counsel for the petitioner submitted that the petitioner's father was a Federal Government servant, and retired from government service with effect from 01.05.2016, on attaining the age of superannuation. On 24.11.1998, the petitioner's father had been allotted House No.522-D, Street No.27, Sector G-6/2, Islamabad by the Estate Office ("suit accommodation"); that the petitioner residing with his father in the suit accommodation; that the petitioner is serving as a Senior Teacher (BPS-17) at the Islamabad Model College for Boys at Chak Shahzad; that the Sub-Committee of the Cabinet in its meeting dated 21.02.2013 approved the regularization of the petitioner's services; that in the list of the employees approved for regularization, the petitioner's name appears at Sr. No.35; that as a regular employee in the service of the Federal Government, the petitioner was entitled to be given the benefit of

the *proviso* to Rule 15(2) of the Accommodation and Allocation Rules, 2002 ("AAR"); that as respondents No.1 and 2 were bent upon allotting the suit accommodation to someone else, the petitioner, on 07.01.2017 instituted a suit for declaration, mandatory and permanent injunction before the learned civil Court praying for *inter-alia* a declaration that the petitioner's possession of the suit accommodation was in accordance with the law; that vide order and decree dated 28.02.2017, the learned civil Court rejected the petitioner's plaint under Order VII, Rule 11 C.P.C.; that the petitioner's appeal against the order and decree of the learned civil Court was also dismissed by the learned appellate Court, vide judgment and decree dated 17.03.2017; that the learned Courts below concurrently erred by non-suiting the petitioner; that the learned Courts below did not appreciate that the regularization of the petitioner's services had been approved by the Sub-Committee of the Cabinet; that the petitioner on the basis of the said approval continued to perform his duties as a Federal Government servant, and was therefore entitled to be given the benefit of the proviso to Rule 15(2) of the AAR; and that the learned Courts below also did not appreciate that others similarly placed persons had been allotted government accommodation. Learned counsel for the petitioner prayed for the concurrent orders passed by the learned Courts below to be set aside.

3. On the other hand, learned Assistant Attorney-General along with Mr. Mumtaz Khan, Joint Estate Officer, submitted that at no material stage did the petitioner submit an application for the allotment of the suit accommodation in his favour; that in his civil suit, the petitioner concealed the fact that he had earlier filed a civil suit before the learned civil Court, which had been dismissed, vide order dated 05.12.2016; that an appeal against the said order was also dismissed by the learned appellate Court, vide order dated 19.12.2016; that the suit accommodation was vacated on 02.01.2017; that the suit accommodation has already been allotted to Mr. Muhammad Riaz, Superintendent, Federal Directorate of Education, vide allotment letter dated

13.05.2016 and possession of the suit accommodation has already been handed over to him; and that since the petitioner's case regarding his regularization is pending before this Court in W.P. No.114/2017, he cannot be considered as a regular government servant. Learned Assistant Attorney-General prayed for the writ petition to be dismissed.

4. I have heard the contentions of the learned counsel for the petitioner as well as learned Assistant Attorney-General, and perused the record with their able assistance.

5. The record shows that petitioner's father was a Federal Government servant, and retired from government service with effect from 01.05.2016, on attaining the age of superannuation; that on 24.11.1998, the petitioner's father had been allotted the suit accommodation (i.e. House No.522-D, Street No.27, Sector G-6/2, Islamabad) by the Estate Office. He claimed that he had been residing with his father in the suit accommodation. The petitioner claims to have been appointed on 02.01.2012 as a Senior Teacher (BS-17) on daily wages basis in the Islamabad Model College for Boys in Chak Shahzad, Islamabad. The Sub-Committee of the Cabinet on Regularization of Contract / Daily Wages Employees in the Ministries / Divisions / Attached Departments / Autonomous / Organizations, etc. in its meeting dated 21.02.2013 approved the regularization of the services of 529 employees (including the petitioner) in the Federal Directorate of Education. In the list of the employees approved for regularization, the petitioner's name appears at Sr. No.35.

6. The petitioner's case before the learned civil Court was that as a regular employee in the service of the Federal Government, the petitioner was entitled to be allotted the suit accommodation by giving him the benefit of the *proviso* to Rule 15(2) of the AAR. As the suit accommodation was not allotted to the petitioner, he, on 07.01.2017 instituted a suit for declaration, mandatory and permanent injunction before the learned civil Court praying for *inter-alia* a declaration that the petitioner's possession of the suit accommodation was in accordance with the law. Vide order and decree dated 28.02.2017, the learned

civil Court dismissed the petitioner's suit. Vide judgment and decree dated 17.03.2017, the petitioner's appeal against the order and decree of the learned civil Court was also dismissed.

7. Now, if the spouse or children living with a Federal Government servant in a government accommodation want to be given the benefit of allotment of such accommodation so that they can continue to live in such accommodation after the retirement of the Federal Government servant, they have to apply to the Estate Office for the allotment of such accommodation under the proviso to Rule 15 (2) of the AAR. An allotment of government accommodation under the proviso to Rule 15 (2) of the AAR can be made only if the applicant (spouse or child of a Federal Government servant) is eligible or otherwise entitled for government accommodation, or becomes so entitled or eligible within a period of six months of the retirement of the Federal Government servant with whom such an applicant was living. In any case, a spouse or a child of an allottee/Federal Government servant cannot continue to reside in the government accommodation beyond six months from the date of the retirement of the allottee/Federal Government servant, unless the government accommodation is duly allotted to such a spouse or child under the proviso to Rule 15 (2) of the AAR by the Estate Office.

8. In the case at hand, the suit accommodation was not allotted to the petitioner at any material stage. Across the rostrum, I was shown an application dated 17.02.2016 said to have been submitted by the petitioner to the Estate Office for the allotment of the suit accommodation under the proviso to Rule 15 (2) of the AAR. In this application, the petitioner has written that he is serving as a "daily wager". This shows that the petitioner was well aware that the approval of the above-mentioned Cabinet Sub-Committee given in the year 2013 did not change the nature of the petitioner's employment from being a daily wager to a regular employee of the Federal Government. Now, under Rule 3 of the AAR, 2002, a Federal Government servant is eligible for allotment of government accommodation. The

definition of Federal Government servant given in Rule 2 (g) of the AAR does not include a person working as a daily wager. Therefore, there was no infirmity in the non-entertainment of such an application by the Estate Office. There is no other application on the record of this petition submitted by the petitioner to the Estate Office for the allotment of the suit accommodation.

9. The issue whether the petitioner is a regular Federal Government servant is admittedly the subject matter of Writ Petition No.114 of 2017 titled, "Mohammad Mudassir Sardar Vs. Ministry of Capital Administration & Development, etc", which is pending adjudication before this Court. The petitioner cannot be given a licence to reside in the suit accommodation or regain possession thereof until the said litigation is finally decided. Additionally, the suit accommodation has already been allotted to a Federal Government servant, who had waited since long in the General Waiting List maintained by the Estate Office under Rule 6 of the AAR. In view of the above, this petition, being devoid of merit, is dismissed. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2017

(JUDGE)

Sultan*

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