JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

C.R.No.28 of 2016

Mrs. Zaib-un-Nisa
VERSUS
Ministry of Housing & Works through its Secretary & another

Date of Hearing:	02.03.2016
Petitioner by:	Petitioner-in-person along with her husband, namely, Mr. Fazal-ur-Rehman
Respondents by:	Raja Ahsan Mehmood Satti, learned Standing Counsel with Miraj Muhammad Khan, Section Officer M/o Housing & Works, Islamabad

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MIANGUL HASSAN AURANGZEB, J:- Through the instant Civil Revision Petition, the petitioner, Mrs. Zaib-un-Nisa, has impugned the Order dated 20.01.2016, passed by the Court of learned Additional District Judge-III (West), Islamabad, whereby the petitioner's appeal against the Order dated 07.01.2016, passed by the Court of learned Civil Judge 1st Class, Islamabad, was dismissed.

2. Vide the said Order dated 07.01.2016, the learned Civil Court had dismissed the application for temporary injunction under Order XXXIX Rules 1 & 2 CPC. This application had been filed by the petitioner along with her suit for declaration, mandatory and permanent injunction praying for *inter-alia* a declaration to the effect that the petitioner was entitled to the allotment of Quarter No.318-E (New No.6-E) Street No.78, G-6/4, Islamabad ("the Government Accommodation"), under Rule 15(2) of the Accommodation Allocation Rules, 2002 ("AAR, 2002"). This Government Accommodation had earlier been allotted to the petitioner's husband, who retired from government service on 03.04.2015. In the said suit, the petitioner had also sought an injunction restraining the Ministry of Housing & Works, Government of Pakistan and the Estate Office from dispossessing the petitioner or allotting the said Government Accommodation to any one else.

3. The record reveals that vide order dated 18.08.2015, the learned Civil Court restrained the respondents from dispossessing the petitioner from the Government Accommodation. The respondents contested the said civil suit by filing a written statement. After an *inter parte* hearing, the learned Civil Court, vide order dated 07.01.2016, dismissed the petitioner's application for temporary injunction. Aggrieved by the said order, the petitioner filed an appeal before the Court of Additional District Judge, Islamabad. Vide judgment dated 20.01.2016, the learned Appellate Court dismissed the petitioner's appeal.

4. The petitioner pleaded her case through her husband, Mr. Fazal-ur-Rehman. The petitioner impugned the concurrent orders passed by the courts below by contending that she had been transferred as a Senior Auditor (BPS-16) from Accountant General Pakistan Revenue ("A.G.P.R.") to the Federal Treasury Office, Islamabad ("F.T.O."), on 26.02.2015, and that her services as Senior Auditor at the F.T.O. had been confirmed on 31.08.2015. She was of the view that as she had become eligible for the allotment of government accommodation within six months of the retirement of her husband, she was entitled under the proviso to Rule 15(2) of the AAR, 2002, to be allotted the same Government Accommodation, which had earlier been allotted to her husband and where both of them were presently residing. It was submitted that, on 08.04.2015, the petitioner applied to respondent No.1 for the Government Accommodation, wherein she took the following grounds:-

> "(i) I am suffering from high blood pressure as well as serious/chronic weakness regarding my bones. My husband is also suffering from high blood pressure as well as sugar and due to this Federal Government Hospital is very near to out government residence for getting proper treatment regularly.
> (ii) Government Quarter No.318/E (New No.6/E) Street No.78 Sector G-6/4, Islamabad was allotted to my husband named Mr. Fazal-ur-Rehman who has been retired as Superintendent (BPS-17) (served as Section Officer on current charge basis in Ministry of Industries and Production) after attaining the age of superannuation on 03.04.2015.

(iii) I am serving as Senior Auditor (BPS-16) in Federal Treasury Office, Islamabad and I am eligible for the transfer of above said quarter vide Housing and Works letter No.2(9)/2006 Policy dated 3rd November, 2009 (copy enclosed)."

5. Vide letter dated 13.08.2015, the Ministry of Housing and Works, Islamabad, turned down the petitioner's application on the ground that the employees of A.G.P.R. and F.T.O. were not eligible for availing government accommodation from the pool of the Estate Office. It was also submitted that it was an obligation of the State to provide shelter and accommodation to the government employees. It was also submitted that the Estate Office had allotted officers serving at the F.T.O. government accommodation.

6. The respondents, represented by the learned Standing Counsel, resisted the petition by filing para-wise comments. The learned Standing counsel submitted that the F.T.O. is an attached department of the A.G.P.R.; that the A.G.P.R. has its own residential colony/ pool of accommodation to accommodate its employees; that the petitioner is ineligible for government accommodation; that the government accommodation previously allotted to the petitioner's husband (who retired from government service on 03.04.2015) had been cancelled on 02.10.2015, i.e. six months after his retirement; that the petitioner had vide order dated 26.02.2015 been transferred to the F.T.O. on temporary basis; that the A.G.P.R. had vide letter dated 10.07.2015 confirmed that the F.T.O. was an attached department of A.G.P.R. and that the petitioner had been transferred to F.T.O. on mutual transfer basis.

7. The respondents placed reliance on a Office Memorandum dated 03.02.2016, issued by the Ministry of Housing & Works, according to which the request of the office of the A.G.P.R. for allotment of government owned residential accommodation to its employees from the pool of the Estate Office was considered by the said Ministry, but was not acceded to. Reliance was also placed on the Office

Memorandum dated 18.01.2010, according to which employees of A.G.P.R. were not entitled to accommodation from the pool of the Estate Office in terms of Rule 3(1) of AAR, 2002. In making his submissions, the learned Standing Counsel placed reliance on the Judgment dated 19.01.2016 passed by the Hon'ble Supreme Court of Pakistan in Civil Petition No.2311/2014 titled "Engineer Syed Muhammad Hassan Vs. Muhammad Yaseen Saleemi etc", wherein it was held that in view of an alternate remedy of an appeal and a revision available to the federal government servant against an order or a decision passed under the AAR, 2002, a writ petition under Article 199 of the Constitution against such an order was not maintainable. The learned Standing Counsel concluded his submissions with the prayer that the petition be dismissed.

8. The petitioner rejoined with the submission that as her services at the F.T.O. were confirmed on 31.08.2015, she was eligible for government accommodation and, therefore, entitled to retain the Government Accommodation that had been allotted to her husband.

9. I have heard the petitioner along with her husband as well as the learned Standing counsel and have perused the record with their able assistance.

10. Now there is no denying the fact that the petitioner's husband, on account of being a federal government servant, had been allotted the Government Accommodation in question, and that he retired from government service on 03.04.2015. This allotment stands cancelled with effect from 02.10.2015. On account of the injunctive orders passed by the learned courts below as well as this Court, the petitioner is still residing in the said Government Accommodation. The learned courts below dismissed the petitioner's application for temporary injunction primarily on the ground that the petitioner, as an employee of the F.T.O., was not eligible for government accommodation from the pool of the Estate Office, and that as the petitioner was working on temporary

basis at the F.T.O., she was not eligible for government accommodation under Rule 3(1) of the AAR, 2002, which reads as follows:-

> "3. Eligibility. -- (1) All married FGSs in the Ministries or Divisions and their Attached Departments except those maintaining their own pool of accommodation or funds for hiring of houses, shall be eligible for accommodation from the Estate Office.".

11. Within six months of her husband's retirement, her employment at the F.T.O. was confirmed. In response to the Estate Office's query regarding the job status of the petitioner, the F.T.O. vide letter dated 06.05.2015, informed the Estate Office that the petitioner was a permanent employee and entitled to government accommodation. However, vide letter dated 10.07.2015, the office of the A.G.P.R. informed the Ministry of Housing & Works that the F.T.O. is an attached department of the A.G.P.R., and that petitioner had been transferred on temporary transfer basis to F.T.O.

12. The petitioner has placed on record letter dated 18.05.2010, whereby the Estate Office had allotted Quarter No.1/11 C, G-9/2, Islamabad to Mr. Mustafa Kamal, Accounts Clerk (BS-11) at the F.T.O.; letter dated 15.11.2012, whereby the Estate Office has allotted Quarter No.40/14-CAT-V, G-10/3, Islamabad to Mr. Muhammad Zeeshan Butt, Senior Auditor (BS-16) of the F.T.O.; and letter dated 03.3.2015, whereby the Estate Office has allotted Quarter No.36/7, CAT-III, G-10/2, Islamabad to Mr. Sajid Ali Senior Auditor (BS-16) at the F.T.O. Vide letter dated 13.08.2015, the petitioner's application for the allotment of Government Accommodation was turned down by the respondents on the sole ground that the "employees of A.G.P.R. and F.T.O. are not eligible for availing Government accommodation form the pool of the Estate Office" In view of the allotment letters issues by the Estate Office to the employees of F.T.O., for which no explanation has been given by the respondents in their written comments, the contention of the respondents that the

petitioner, as an employee of the F.T.O., is not entitled to get accommodation from the pool of the Estate Office, is not tenable.

13. Additionally, the Estate Office processed the petitioner's application for accommodation under Rule 15(2) of the AAR, 2002, and the F.T.O. had confirmed that she was a permanent employee. Vide letter dated 21.01.2016, the office of A.G.P.R. has confirmed that the F.T.O. has no quota in the residential colony of A.G.P.R. at Islamabad. Additionally, in the Service Certificate issued by the F.T.O. on 21.01.2016 to the petitioner it was confirmed that the petitioner was entitled for accommodation from the pool of the Estate Office. The office of the A.G.P.R. had, on 21.01.2016 certified that the petitioner, after her transfer to the F.T.O., has no link with her parent department i.e. A.G.P.R.

14. Perusal of the impugned orders reveal that the documents referred to hereinabove including the various allotment letters issued by the respondents/Estate Office to officers in the service of the F.T.O., have not been taken into consideration. Furthermore, the position taken by the A.G.P.R. as well as the F.T.O. that the petitioner is a permanent employee has also not been given due consideration. As these documents do not find mention or consideration in the orders passed by the learned courts below, I am inclined to set aside the Order dated 07.01.2016, passed by the learned Civil Court and the Judgment dated 20.01.2016, passed by the learned Appellate Court and remand the matter to the learned Civil Court to re-hear the petitioner's application for interim injunction. As there is an ever growing need for government accommodation by government employees in General Waiting List, maintained under Rule 6 of the AAR, 2002, the learned Civil Court may decide the said application within a period of two weeks from the date of receipt of this Order. In deciding the said

application, the learned Civil Court shall not in any manner be influenced by an observation made herein.

15. In view of the aforementioned, the instant civil revision petition is allowed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2016

(JUDGE)

Qamar Khan*

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