ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

I.C.A. No.1114 of 2013
Muhammad Idrees
Versus.
Federation of Pakistan through Secretary Ministry of Housing and Works and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	21.11.2017	**Hafiz Ali Asghar, Advocate for the appellant,** **Mr. Khurram M. Qureshi, Advocate for respondent No.5, and appellant in I.C.A. No.1124/2013,** **Mr. Shabbir Ahmed, learned Assistant Attorney-General.** **Mr. Mumtaz Khan, Joint Estate Officer, Estate Office.** **Through this common judgment, we propose to decide intra Court appeals No.1114/2013 and 1124/2013, since they entail common questions of law and fact, and arise from the same order dated 26.11.2013, whereby the learned Single Judge-in-Chambers dismissed the writ petitions filed by the appellants.** **2. Through I.C.A. No.1114/2013, the appellant, Muhammad Idrees, has assailed judgment dated 26.11.2013, passed by the learned Single Judge-in-Chambers, whereby writ petition No.1971/2013 filed by the appellant, was dismissed with the direction to the Estate Office (respondent No.2) to allot government accommodation i.e. House No.29/Cat-II, Sector I-8/1, Islamabad ("suit accommodation") to a government employee who is on top of the general waiting list ("G.W.L.").** **3. Through I.C.A. No.1124/2013 the appellant, Nasir Mehmood, has assailed the judgment dated 26.11.2013, passed by the**

learned Single Judge-in-Chambers, whereby writ petition No.1971/2013 filed by respondent No.4 (Muhammad Idrees), was dismissed with the above mentioned direction.

4. Muhammad Idrees, the appellant in I.C.A. No.1114/2013 shall hereinafter be referred to as "the appellant", whereas Nasir Mehmood, the appellant in I.C.A. No.1124/2013 shall hereinafter be referred to as "respondent No.5").

5. Learned counsel for the appellant submitted that vide allotment letter dated 14.09.2009, the suit accommodation was allotted by the Estate Office to the appellant, who was serving as Private Secretary (BS-18) in the National Assembly Secretariat; that the said allotment was made in relaxation of the rules under Rule 29-A of the Accommodation and Allocation Rules, 2002 ("A.A.R., 2002"); that on 05.10.2009, the appellant filed the suit for declaration and permanent injunction against the Ministry of Housing and Works and Estate Office before the Court of the learned Civil Judge, Islamabad; that the defendants in the said suit filed a written statement in which it was clearly pleaded that the suit accommodation was allotted to the appellant in relaxation of the rules and that there was no intention to withdraw the said allotment; and that in view of the pleadings in the said written statement, the learned civil Court disposed of the said civil suit, vide order dated 31.10.2009.

6. Learned counsel for the appellant further submitted that at no stage was the

suit accommodation ever allotted by the Estate Office to respondent No.5; that the suit accommodation was allotted to respondent No.5's father, who retired from government service on 02.08.2010; that on 16.07.2009, respondent No.5 was appointed as a Lecturer (BPS-17) on contract basis in the Federal Directorate of Education ("F.D.E."); that during his contractual service, respondent No.5 managed to obtain a letter of recommendation from the Prime Minister's Secretariat to the Ministry of Housing and Works for the allotment of the suit accommodation; that although vide letter dated 25.01.2010, the Ministry of Housing and Works conveyed the approval of the competent authority to the Estate Office for the allotment of the suit accommodation to respondent No.5 under Rule 15(2)(b) read with Rule 29-A of the A.A.R., 2002; that a period of six months from the date of respondent No.5's father retirement expired on 02.02.2011; that by 02.02.2011, respondent No.5 was still a contractual employee; that respondent No.5's services were not regularized until 26.10.2011 when notification was issued by the Capital Administration and Development Division.

7. Learned counsel for the appellant further submitted that the suit instituted by respondent No.5 was liable to be dismissed due to non-impleadment of the appellant as a necessary party; that by the time the said suit was instituted on 22.04.2010, the appellant had already been allotted the suit accommodation vide allotment letter dated 14.09.2009; that the said suit was decreed

ex-parte because the defendants in the said suit had neither filed the written statement nor bothered to contest the suit; that the judgment and decree passed in the said suit has been suspended by the learned civil Court, vide order dated 07.05.2013, passed by the learned Civil Court; that presently there is no decree qua the suit accommodation in respondent No.5's favour; that since respondent No.5 holds an allotment letter issued by the Estate Office in his favour, the impugned judgment passed by the learned Single Judge should be set aside and the Estate Office as well as the Ministry of Housing and Works should be directed to handover possession of the suit accommodation to the appellant.

8. On the other hand, learned counsel for respondent No.5 submitted that the learned Single Judge-in-Chambers erred by not appreciating that a writ petition with respect to a matter pertaining to the A.A.R., 2002 was not maintainable; that there was an adequate alternative remedy available under the law to the appellant; that the appellant never availed the said remedy provided under Rule 29-A of the A.A.R., 2002; that the appellant never challenged the judgment and decree dated 24.04.2013, passed by the learned appellate Court, whereby the ex-parte judgment and decree dated 10.04.2012, passed by the learned civil Court in respondent No.5's favour, was upheld; that since the appellant had already availed the remedy of filing an application under Section 12(2) C.P.C. against the ex-parte judgment and decree dated 10.04.2012, writ

petition filed by the said appellant was not maintainable; that the allotment letter in the appellant's favour has already been cancelled, vide letter dated 15.04.2013, issued by Ministry of Housing and Works and letter dated 27.04.2013 issued by the Estate Office; that even the Prime Minister of Pakistan was desirous that the suit accommodation should be allotted to respondent No.5; that as a contractual employee respondent No.5 could have been allotted government accommodation; and that respondent No.5 as a contractual employee until his regularization on 26.10.2011 came within the meaning of a Federal Government Servant entitled to be allotted government accommodation. Learned counsel for respondent No.5 prayed for I.C.A. No.1114/2013 to be dismissed, and for I.C.A. No.1124/2013 to be allowed. As a fallback position, learned counsel for respondent No.5 submitted that the direction in the impugned judgment that the suit accommodation should be allotted to the government employee on top of the G.W.L. should be set-aside.

9. We have heard the contentions of the learned counsel for the contesting parties, and have perused the record with their able assistance.

10. The record shows that House No.29, Cat-II, Sector I-8/1, Islamabad, was allotted, vide allotment letter dated 10.07.1983, to respondent No.5's father, Chaudhry Muhammad Sadiq, who retired from government service on 02.08.2010. Respondent No.5 was residing with his

father when the latter retired. On 16.07.2009, respondent No.5 was appointed as Lecturer (BPS-17) on contract basis in the F.D.E.

11. Apparently, the Minister for Education had addressed a letter to the Prime Minister of Pakistan regarding allotment of the suit accommodation to respondent No.5. Vide letter dated 19.08.2009, the desire of the Prime Minister's Secretariat that the Ministry of Housing and Works may consider respondent No.5's request for the allotment of the suit accommodation. The second paragraph of the said letter is reproduced herein below:-

> *"2. It has been desired that Ministry of Housing & Works may consider the subject request in the light of Rule 20 of Pakistan Allocation Rules recently restored on the orders of the Apex Court, under intimation to this Secretariat, at the earliest."*

12. Consequently, vide letter dated 25.01.2010, the Ministry of Housing and Works conveyed its approval for the allotment of the suit accommodation to respondent No.5 under Rule 15(2)(b) read with the Rule 29-A of the A.A.R., 2002.

13. Vide letter dated 03.04.2010, the Ministry of Housing and Works approved the allotment of the first available Category-II government accommodation to the appellant (who was serving as PS to the Chairman, National Assembly Standing Committee of Housing and Works) in lieu of the suit accommodation in relaxation of the rules under Rule 29-A of the A.A.R., 2002. Furthermore, the Estate Office was directed to take a necessary action under intimation to the Ministry of Housing and Works.

14. Vide letter dated 13.01.2011, the Ministry of Housing and Works conveyed to the Estate Office the approval of the competent authority for the allotment of the suit accommodation in favour of respondent No.5 under Rule 15(2) read with Rule 29-A of the A.A.R., 2002, in supersession of their previous orders.

15. Vide notification dated 26.10.2011 issued by the Capital Administration and Development Division, 236 contractual/daily wages employees in the educational institutions of the F.D.E., were regularized. Respondent No.5 was one such regularized employee of an educational institution of F.D.E.

16. Prior to this, respondent No.5 on 22.04.2010 had instituted a suit for declaration and permanent injunction against the Ministry of Housing and Works, and the Estate Office, before the Court of the learned Civil Judge, Islamabad. In the said suit, respondent No.5 had prayed for *inter-alia* a declaration to the effect that he is the lawful allottee in possession of the suit accommodation. Vide order dated 24.02.2011, the learned civil Court confirmed the ad-interim injunctive relief which had been granted to respondent No.5 vide order dated 29.04.2010. Vide order dated 10.04.2012, the said suit was decreed ex-parte. The defendants in the said suit were directed to issue a final allotment letter in favour of respondent No.5, and not to interfere in his possession of the suit accommodation.

17. Although the appellant (Muhammad Idrees) was not a party to the civil suit instituted by respondent No.5, he filed an appeal against the ex-parte judgment and decree dated 10.04.2012, passed by the learned civil Court in respondent No.5's favour. In the said appeal, it was pleaded *inter-alia* that the suit accommodation was never allotted to respondent No.5, and that under the A.A.R., 2002, government accommodation of a higher category cannot be allotted to a spouse or child of a retired government employee beyond the entitlement of such spouse or child. Vide interim order dated 12.07.2012, the learned appellate Court suspended the operation of the impugned order. Vide judgment and decree dated 24.04.2013, the learned appellate Court dismissed the said appeal on the ground of limitation. The learned appellate Court was cognizant of the fact that the appellant was not a party to the civil suit, but since the appellant had not mentioned anything in the memorandum of the appeal, about the date on which he gained knowledge of the said judgment and decree, the learned appellate Court dismissed the appeal as time barred.

18. Thereafter, the appellant filed an application under Section 12(2) C.P.C. for setting aside the ex-parte judgment and decree dated 10.04.2012 before the learned civil Court. Vide order dated 07.05.2013, the learned civil Court suspended the operation of the impugned judgment and decree dated 10.04.2012.

19. Now let's come to the case of the appellant (Muhammad Idrees) at page-23 of I.C.A. No.1114/2013 is allotment letter dated 14.09.2009, issued by the Estate Office under Rule 29-A of the A.A.R., 2002 for the allotment of the suit accommodation in the appellant's favour. The said allotment letter clearly shows that at the time of the allotment, the appellant was serving as Private Secretary (BS-18), National Assembly Secretariat. Earlier, he had been allotted House No.1/8, Street 17, Cat-IV, G-9/2, Islamabad. The appellant, on 05.10.2009, filed a civil suit for declaration and mandatory injunction against the Ministry of House and Works, and the Estate Office before the Court of the learned Civil Judge, Islamabad. In their written statement, the defendants in the said suit, pleaded that the suit accommodation had been allotted to the appellant in relaxation of the rules, vide allotment letter dated 14.09.2009, and that there is no intention to withdraw the said allotment until there is a change in the government policy. Vide order dated 31.10.2009, the learned civil Court disposed of the said suit in view of the said pleadings in the written statement.

20. Regardless of the fact that on the appellant's application under Section 12(2) C.P.C., the learned civil Court had suspended the operation of the ex-parte judgment and decree dated 10.04.2012, the appellant filed writ petition No.1971/2013 before this Court praying for *inter-alia* for a direction that the suit accommodation be vacated from respondent No.5, and

possession of the same be handed over to the appellant.

21. Now, vide notification dated 02.05.2012, the appellant was granted BS-19 with the nomenclature of Senior Private Secretary (BS-19) subject to the condition that he would not proceed on deputation to other ministries/departments before serving in the National Assembly Secretariat for at least two years.

22. It is not disputed that the suit accommodation is a category-II accommodation. Under Rule 5 of the A.A.R., 2002, a category-II accommodation can be allotted to a Federal Government Servant serving in BPS-19. When the allotment letter dated 14.09.2009 allotting the suit accommodation to the appellant was issued by the Estate Office, the appellant was admittedly serving as a Private Secretary (BPS-18), in the National Assembly Secretariat. He was not a BPS-19 officer. The appellant was granted BPS-19 through notification dated 02.05.2012 i.e. more than two and a half years after the suit accommodation was allotted to the appellant. Therefore, *prima facie* the said allotment letter was contrary to the requirements of Rule 5 of the A.A.R., 2002, and therefore, not valid.

23. Under Rule 29-A of the A.A.R., 2002, the Federal Government can relax any rule governing allotment of accommodation to eligible Federal Government Servants in the public interest for deserving and hardship case and on compassionate grounds for reasons to be recorded in writing for such

relaxation. Neither the said allotment letter dated 14.09.2009 nor any other document on the record show any reasons for relaxing the rules in the appellant's favour. No case for hardship or deservence is borne out from the record to justify the relaxation of rules. The said allotment letter dated 14.09.2009 shows that the appellant had earlier been allotted House No.1/8, Street 17, Cat-IV, G-9/2, Islamabad. Therefore, the appellant was certainly not facing any hardship or shelterlessness so as to cause the Estate Office or the Ministry of Housing and Works to relax the rules in his favour. This is an added reason for holding that the allotment letter dated 14.09.2009 is not valid. After the said allotment letter dated 14.09.2009, no other allotment letter has been issued in the appellant's favour by the Estate Office. Even though, the Estate Office may come under the administrative control of the Ministry of Housing and Works, the latter is not empowered under the A.A.R., 2002 to usurp the power of the Estate Office and issue allotment letters of government accommodations. The Ministry of Housing and Works can only exercise powers specifically conferred upon it under the provisions of the A.A.R., 2002 and not beyond.

24. As regards respondent No.5, he claims allotment of the suit accommodation on the strength of the proviso to Rule 15(2) of the A.A.R., 2002 which is reproduced herein below:-

> *"15 (2) An allottee, on his retirement or expiry of contract period shall be*

entitled to retain the accommodations under his occupation for a period not exceeding six months, on payment of normal rent and his facility will be available to FGS once only."

"Provided that the serving spouse or children living with FGS may be allotted the same accommodation, if he is eligible and otherwise entitled for accommodation within six months of the retirement of the FGS. If the accommodation allotted is higher than the entitlement of the spouse or children, he may apply in writing for the allotment of accommodation in accordance with his eligibility, in lieu of the occupied accommodation. The spouse or children shall not be eligible for allotment of accommodation of higher category." **(Emphasis added).**

25. Now, there is no denying the fact that respondent No.5 was employed on contract basis on 16.07.2009. Vide Notification dated 26.10.2011, respondent No.5's services were regularized pursuant to a decision made by the Cabinet Sub-committee on regularization of contractual/daily wages employees. The documents on the record confirm that respondent No.5's father retired from government service with effect from 02.08.2010. Admittedly, respondent No.5 was not regularized within a period of six months from the date of his father's retirement so as to entitle him to the allotment of suit accommodation under Rule 15(2) of the A.A.R., 2002.

26. The essential question that needs to be determined is whether an employee working on contract basis, in the F.D.E., is entitled to take the benefit of Rule 15(2) of the A.A.R., 2002. As mentioned above, during the six-months period after the respondent No.5's father's retirement, respondent No.5 was employed on contract basis. It is my view

that the petitioner could not call himself a "Federal Government Servant" during this six-months. This is because during this period, the petitioner was not appointed as a Federal Government Servant as defined in Rule 2(g) of the A.A.R., 2002, as under:-

> *"2(g) Federal Government Servant (FGS) means 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 ad-hoc basis."*

27. During respondent No.5's contractual employment, the Capital Administration and Development Division (which has administrative control over F.D.E.) had not certified that respondent No.5 had been appointed against a regular post. Hence, during the six-month period after his father's retirement, respondent No.5 was not eligible for allotment of government accommodation under the proviso to Rule 15(2) of the A.A.R., 2002. The benefit of the proviso to Rule 15(2) extends only to serving spouse or children living with FGS who may be allotted the same accommodation, if <u>they are eligible and otherwise entitled for accommodation.</u>

28. Furthermore, the services of respondent No.5 were regularized vide notification dated 26.10.2011, which is more than eight months of the lapse of the six-month period of respondent No.5's retirement. Therefore, respondent No.5 was not entitled to seek any benefit under Rule 15(2) of the A.A.R., 2002. In the case of <u>Adnan Qureshi Vs. Capital Development</u>

Authority reported as 2015 PLC (CS) 1030, it has been held by this Court that *"the post filled on daily wages, work-charge basis or hired from contingencies or ad-hoc basis are excluded from being Federal Government Servants eligible for allotment of accommodation."* It was further held that after the expiry of a period of six month from the date of the retirement of the petitioner's father, the petitioner becomes a trespasser as defined in Rule 2(p) of the A.A.R., 2002.

29. As regards the contention of the learned counsel for respondent No.5 that as a contractual employee of F.D.E. until his regularization on 26.10.2011, respondent No.5 was entitled to be allotted Government accommodation, the same does not appeal to us. The terms and conditions of respondent No.5's contractual appointment letter dated 16.07.2009, does not entitle him to Government accommodation.

30. As respondent No.5's services were regularized on 26.10.2011, there is nothing preventing him from applying for government accommodation and getting into a queue/G.W.L. maintained under Rule 6 of the A.A.R., 2002.

31. The learned counsel for the appellants in both the appeals have not persuaded us to interfere with the impugned judgment dated 26.11.2013, passed by the learned Single Judge-in-Chambers. Even if the learned Single Judge-in-Chambers had not made the direction regarding the allotment of the suit accommodation to the employee on top of the G.W.L., it is even otherwise obligatory upon the Estate Office to allot Government

accommodations to employees as per their seniority in the G.W.L. maintained under Rule 6 of the A.A.R., 2002.

32. By reason of the aforementioned, both the appeals are dismissed with no order as to costs. Before parting with this judgment, it may be observed that nothing contained herein shall prejudice either party in the proceedings pending before the learned Courts below.

(ATHAR MINALLAH)
JUDGE

(MIANGUL HASSAN AURANGZEB)
JUDGE

Ahtesham*

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