

Housing Allotment Draw Cannot Override Eligibility Rules: Federal Constitutional Court

The FCC upheld cancellation of flats allotted to ineligible applicants. Success in a computerized draw did not create a vested right, and a fresh decision after hearing did not amount to contempt.

Syed Ashfaq Anwar and connected cases | Federal Constitutional Court | 21 September 2026

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The ruling in simple terms

Winning a computerized draw for public housing does not entitle an applicant to a flat if the applicant did not meet the scheme's eligibility conditions. The Federal Constitutional Court upheld the cancellation of allotments to serving federal officers who were outside the class defined by the Provincial Housing Authority's advertisement. Their inclusion in the draw was an administrative mistake, not a source of a vested right.

The Court also dismissed a connected contempt appeal. After an earlier High Court decision set aside the first cancellation, the authority reconsidered eligibility, gave the applicants a personal hearing and issued a fresh decision. Reaching the same adverse result after lawful reconsideration was not disobedience of the earlier judgment.

The housing scheme and the dispute

The case concerned 2,100-square-foot high-rise flats in Phase V, Hayatabad, Peshawar. Officers of the Police Service of Pakistan applied under a June 2020 advertisement, paid the required amount and were selected in a computerized draw. The Provincial Housing Authority subsequently cancelled their allotments because they were serving federal employees and did not meet the advertised eligibility criteria.

The advertisement confined the scheme to specified categories of retired federal officers and other qualifying officers with the required domicile or period of service in Khyber Pakhtunkhwa or FATA. The applicants were still in service when the draw was held. The FCC treated that distinction as decisive; merely working in the Police Service of Pakistan was not enough to satisfy this scheme's conditions.

The Peshawar High Court set aside the first cancellation communications in April 2021. The authority then convened a Special Committee, heard the applicants on 17 August 2021, considered their representations and the Advocate General's opinion, and resolved on 14 December 2021 to cancel the allotments again. A later High Court judgment dismissed the applicants' challenges. They brought the present proceedings before the FCC.

Why the draw created no vested right

The FCC distinguished eligibility from selection. A draw chooses among people qualified to participate; it cannot itself make an ineligible person eligible. Processing an application, accepting payment and recording a successful draw do not amend the terms of a public housing scheme.

The Court said a legally enforceable allotment must have a lawful foundation in the governing criteria. An administrative error cannot create that foundation. At most, being selected gave the applicants an

expectation that their claims would be examined fairly under the scheme, not an unconditional right to retain flats despite failing its essential conditions.

That mattered because these flats were a limited public benefit intended for a defined group. Letting ineligible applicants keep them would prejudice people who did qualify. Equal treatment required the authority to apply the published criteria consistently, rather than repeat its original error.

Could the authority cancel an allotment it had already made?

Yes, on these facts. The FCC discussed section 21 of the General Clauses Act, 1897, and the limited ability of a competent authority to revisit an earlier order. It did not give officials unlimited power to cancel valid allotments at will. Any correction still depends on the governing law and scheme, the authority's competence, and fair procedure.

Here the original benefit lacked the necessary eligibility foundation. The authority corrected that mistake after a fresh examination and personal hearing. The Court rejected reliance on locus poenitentiae, legitimate expectation and estoppel to preserve a benefit contrary to the express conditions. Those doctrines could not turn an initially unlawful allotment into a lawful entitlement.

Why the earlier High Court order did not prevent fresh cancellation

The first High Court judgment set aside the initial cancellation. It did not declare these applicants eligible or permanently award them the flats. The authority remained able to examine eligibility again in accordance with law.

The Special Committee did so and heard the affected applicants. The FCC held that the right to be heard requires a meaningful chance to present one's case; it does not guarantee that the authority must accept that case. No lack of competence, unfairness or other recognized ground for judicial intervention was established in the fresh process.

The contempt appeal failed for the same reason. Contempt required wilful disobedience of a clear court direction. The earlier High Court judgment had not barred a new eligibility decision. A fresh cancellation after reconsideration was not, by itself, defiance of that judgment.

Result and practical effect

The FCC dismissed C.P.L.A. Nos. 800 and 1581 of 2023 and Criminal Appeal No. 383 of 2023 with costs. The cancellations stood. The order was dated 21 September 2026 and approved for reporting; the supplied copy gives no reported law-journal citation.

For applicants, the lesson is to check the advertised eligibility terms before relying on a draw result. For public authorities, the ruling permits correction of an erroneous grant when the governing criteria were not met, but requires a competent decision and meaningful hearing. It does not authorize arbitrary cancellation of a valid allotment.

Source: Syed Ashfaq Anwar and connected petitioners v Government of Khyber Pakhtunkhwa and connected respondents, Federal Constitutional Court of Pakistan, C.P.L.A. Nos. 800 and 1581 of 2023 and Criminal Appeal No. 383 of 2023, order dated 21 September 2026.